



CUYAHOGA COUNTY PUBLIC LIBRARY **BOARD OF TRUSTEES' MEETING**

Tuesday, July 23, 2019 / 5:00 p.m.

Administrative Offices / 2121 Snow Road, Parma

cuyahogalibrary.org

**CUYAHOGA COUNTY PUBLIC LIBRARY
BOARD OF TRUSTEES MEETING AGENDA
23 July 2019
ADMINISTRATIVE BUILDING AUDITORIUM
5:00 p.m.**

TOPIC	TAB#	PAGE#	MOTION
1. Call to Order: Patricia Shlonsky, President			ROLL-CALL
2. Approval of Minutes: June 18, 2019 Board Meeting	1	1-5	ACTION
3. Approval of Minutes: July 8, 2019 Special Board Meeting	1	6-7	ACTION
4. Retiree Recognition	1	8	INFORMATION
5. Public Comment			INFORMATION
6. Report of the Board President			INFORMATION
7. Report of the Executive Director	2	9-18	INFORMATION
8. Human Resources Report	3	19-25	ACTION
9. Finance Committee Report: • Financial Statement Review – Fiscal 2019 – June • Investments: Fiscal 2019 – June • Purchase Approval List • Gift Report	4	26-27 28-32 33 34 35	INFORMATION ROLL-CALL ACTION ACTION
10. New Business • Resolution Authorizing the Library to Enter into an Agreement with Donley's Inc. for Construction Management at Risk Services Relating to the New Construction of the Bay Village Library located in the City of Bay Village • Executive Director Remarks	5	36-99	ACTION INFORMATION
11. Adjourn			ACTION

**CUYAHOGA COUNTY PUBLIC LIBRARY
BOARD OF TRUSTEES MEETING
MINUTES
18 June 2019**

The June 18, 2019 meeting of the Cuyahoga County Public Library Board of Trustees was held at the Cuyahoga County Public Library Administration Building Auditorium, 2111 Snow Road, Parma, Ohio. With a quorum of five (5) Board members present, President Shlonsky called the meeting to order at 5:00 p.m.

Roll-Call: **Present:** Allyn Davies, William J. Leonard; Patricia A. Shlonsky; Maria L. Spangler; Robert W. Varley – **5**.

Absent: Edward H. Blakemore, Dean E. DePiero - **2**

Also present: Executive Director Sari Feldman; Deputy Director Tracy Strobel; Operations Director and Fiscal Officer Scott Morgan; Communications and External Relations Director Hallie Rich; Assistant Finance Director Robert Dolan; Literacy and Learning Division Director Pamela Jankowski; Branch Services Director - East Enda Bracken; Branch Services Director - West Caroline Vicchiarelli; Facilities Director Jeff Mori; IT Director Jim Haprian; Development Director Bridget Hawes; Assistant Development Director Meghann Marnecheck; and other interested observers.

President Shlonsky appointed Trustee Spangler as acting Secretary for the meeting.

Oath of Office: Allyn Davies:

President Shlonsky administered the Oath of Office for appointed Trustee, Allyn Davies. Allyn Davies has been appointed to the Board by the Cuyahoga County Council to serve out the remaining term of our former colleague Trustee Hjar. Her term expires in March 2022. **(See page 178)**

Approval of Minutes:

President Shlonsky asked for a motion to approve the minutes of the May 28, 2019 Board meeting that were sent to the Board members in advance of this meeting.

01-06/2019

Trustee Spangler moved to approve the minutes, seconded by Trustee Varley. Seeing no corrections, omissions or additions, the minutes of the May 28, 2019 Board meeting minutes were approved by unanimous vote of the Board members present.

Retiree Recognition:

President Shlonsky thanked Bonnie Demarchi and Judy Stefanko for their many years of service to Cuyahoga County Public Library (CCPL) and wished them the best on their retirement. Ms. Stefanko was not present. **(See pages 179-180)**

Enda Bracken, East Branch Services Director, read the resolution for Bonnie Demarchi into the record.

Ms. Demarchi mentioned she have enjoyed her 22 years at CCPL, and she will remain an advocate for libraries for the remainder of her days.

Public Comment:

There was no public comment.

Report of the Board President:

President Shlonsky welcomed Allyn Davies to CCPL Board of Trustees. She thanked Director Morgan for joining her at the 2019 Greater Cleveland Partnership Annual Meeting (GCP). CCPL was to receive an award at this event for “Best In Class for Board Diversity” and due to inclement weather and power outages the event did not take place. The award is being mailed.

Report of the Executive Director:

Executive Director Feldman presented the CCPL Annual Report to the Board of Trustees and congratulated the Communications and Marketing team for creating this wonderful report. She welcomed Allyn Davies to CCPL Board of Trustees, who also serves on CCPL Foundation Board.

Executive Director Feldman mentioned CCPL culinary literacy program kickoff is June 27 at 6:30p.m. in the CCPL Parma-Snow Branch auditorium. We are expecting a large turnout for this event with Chef Rocco Whalen, and we will also have an opportunity to recognize numerous donors who have contributed to this program’s success. If you are unable to join us at the evening event, Fox8 News will be filming live at CCPL Parma-Snow Branch, at 6:00 a.m. on the same day with Kickin’ It with Kenny, from the Fox8 show and Chef Rocco Whalen who will talk about culinary literacy.

Executive Director Feldman mentioned the CCPL Foundation golf outing was postponed due to inclement weather and is rescheduled for July 30 at Lakewood Country Club with all the same scheduling as the original date.

Director Rich introduced Paul Fallon, President, Fallon Research & Communications. Mr. Fallon provided a summary of key findings from a recently completed telephone survey of residents in CCPL's service district.

Mr. Fallon thanked everyone for the opportunity to speak this evening.

Report of the CCPL Foundation Board Liaison:

Executive Director Feldman included the Foundation golf outing update in her report in the absence of Trustee Blakemore CCPL's Liaison, for the Foundation Board.

Human Resources Report:

Director Morgan stated there is a correction to the Human Resources report. We have the addition of employee Bridget Hawes, as a change in hours, salary and transfer due to a promotion. Director Morgan referred the Board to the report provided.

02-06/2019

Trustee Leonard moved approval, seconded by Trustee Spangler. Seeing no discussion, the Human Resources Report dated June 18, 2019, was approved as presented by unanimous vote of the Board members present. **(See pages 181-186)**

Finance Committee Report:

Finance Committee Chair Leonard reminded us that the Finance Committee met prior to the Board meeting, and Director Morgan gave an in-depth review of the financials.

Director Morgan gave highlights from the Finance report. He stated in general property taxes we received our final settlement for the first half of the year for \$446,000.00. We should see some advances coming in at the end of June or the beginning of July for the second half of the year.

Director Morgan stated in the Public Library Fund (PLF) the month of May distribution was larger than what we received last year. The collections moving forward should be slightly larger to bring us back to budget. We will continue to monitor this account closely.

Director Morgan stated in the month of May we had three payrolls posted in the salaries account. It is showing slightly over, which is normal, but that should smooth out in the months of June and July.

All other general fund expense accounts are where we would expect them to be for the month and year.

Director Morgan stated we have completed the Maple Heights Branch renovations. We have received and paid the last invoice. This project has been closed out. The only projects open are CCPL Bay Village and Richmond Heights Branches. **(See under FINANCE)**

Investments - May

Director Morgan stated we purchased two new investments for the month; one from Coca Cola Company with a yield of 2.49% and a little over a six-month maturity and the other one from Toyota Motor Credit with a yield of 2.46% with a six-month maturity.

We also purchased three CDs from Multi-Bank Securities with yields of 2.50% with a two-year maturity, 2.55% with a three-year maturity and 2.65% with a four-year maturity.

Transfers

Director Morgan stated there was one transfer for the month in the amount of \$4,665,506.00 from the general fund to the note retirement fund to pay our debt service for principal and interest for the year. The first half of the payment (interest only) was paid this month.

(See under FINANCE)

03-06/2019

Trustee Leonard moved approval, seconded by Trustee Varley. Seeing no additional discussion, the Investment Report Fiscal 2019 – May listing all Money Market Funds, STAR Ohio Accounts, U.S. Treasury Investments, Certificates of Deposit and Agency Securities was approved as presented by roll-call vote. **(See Under FINANCE)**

Roll-Call: **Yea:** Allyn Davies; William J. Leonard; Patricia A. Shlonsky; Maria L. Spangler; Robert W. Varley; **– 5.**

Nea: **– 0.**

Purchase Approval List

Director Morgan stated the Purchase Approval List (PAL) was reviewed in depth at the Finance Committee Meeting.

04-06/2019

Trustee Leonard moved approval of Purchase Approval List, seconded by Trustee Spangler. Seeing no additional discussion, the Purchase Approval List dated June 18, 2019, was approved as presented by unanimous vote of the Board members present. **(See page 187)**

Gift Report

Director Morgan stated the report includes Friends Groups gifts for branch programming, as well as gifts from the Carol & John's Comic Shop, Legacy Village Lyndhurst Community Fund and MyCom that were discussed in detail at the Finance Committee Meeting.

05-06/2019

Trustee Leonard moved approval, seconded by Trustee Varley. The gift report was approved by unanimous vote of the Board members present. **(See page 188)**

- **Resolution Authorizing the Library to Enter into an Agreement with Engelke Construction Solutions for the Beachwood, Chagrin Falls, Solon, and Southeast Restroom Renovations Project**

Director Morgan stated last month we asked permission from the Board to advertise for restroom renovations for the Beachwood, Chagrin Falls, Solon, and Southeast Branches. We had an estimated budget of \$425,000.00. The lowest bidder was Engelke Construction Solutions at \$380,210.00. We have worked with them in the past and they have done great work for us and having the lowest and best responsive bid, we are recommending that we sign a contract with Engelke Construction Solutions for this work.

06-06/2019

Trustee Leonard moved approval, seconded by Trustee Varley. Seeing no additional discussion, the Resolution Authorizing the Library to Enter into an Agreement with Engelke Construction Solutions for the Beachwood, Chagrin Falls, Solon, and Southeast Restroom Renovations Project was approved by unanimous vote of the Board members present. **(See pages 189-190)**

Executive Session

President Shlonsky asked for a motion to recess the meeting for an Executive Session for the purpose of discussing certain personnel matters pertaining to the employment of a public official or employee pursuant to Ohio Revised Code section 121.22 (G)(1). President Shlonsky also stated that no Board action would be taken after the Executive Session.

07-06/2019

Upon motion of Trustee Varley, seconded by Trustee Leonard, President Shlonsky's request to recess for an Executive Session was approved by roll-call vote at 5:46 p.m.

Roll-Call: **Yea:** Allyn Davies; William J. Leonard; Patricia A. Shlonsky; Maria L. Spangler; Robert W. Varley; **– 5.**

Nea: **– 0.**

Executive Session

President Shlonsky asked for a motion to reconvene the Board meeting following the Executive Session.

08-06/2019

Upon motion of Trustee Leonard, seconded by Trustee Spangler, the Board meeting reconvened by roll-call vote at 6:23 p.m.

Roll-Call: **Yea:** Allyn Davies; William J. Leonard; Patricia A. Shlonsky; Maria L. Spangler; Robert W. Varley; **– 5.**

Nea: **– 0.**

Motion to Adjourn

Seeing no other business under consideration for vote, President Shlonsky asked for a motion to adjourn the meeting.

09-06/2019

Upon motion of Trustee Leonard seconded by Trustee Varley the June 18, 2019 meeting of the Cuyahoga County Public Library adjourned at 6:24 p.m.

Approved 23 July 2019

X_____

Patricia A. Shlonsky
President

X_____

Dean E. DePiero
Secretary

**CUYAHOGA COUNTY PUBLIC LIBRARY
SPECIAL BOARD OF TRUSTEES MEETING
MINUTES
08 July 2019**

The July 8, 2019 Special Meeting of the Cuyahoga County Public Library Board of Trustees was held at the Cuyahoga County Public Library Administration Building Auditorium, 2111 Snow Road, Parma, Ohio. With a quorum of seven (7) Board members present, President Shlonsky called the meeting to order at 1:30 p.m.

Roll-Call: **Present:** Edward H. Blakemore; Allyn Davies; Dean E. DePiero; William J. Leonard; Patricia A. Shlonsky; Maria L. Spangler; Robert W. Varley – 7.

Absent: - 0.

Also present: Executive Director Sari Feldman; Deputy Director Tracy Strobel; Operations Director and Fiscal Officer Scott Morgan; Communications & External Relations Director Hallie Rich; Development Director Bridget Hawes; Assistant Finance Director Robert Dolan; Human Resources Acting Director Larry Miller; Assistant Marketing & Communications Director Rob Rua; Literacy and Learning Division Director Pamela Jankowski; Branch Services Director – East Enda Bracken; Branch Services Director- West Caroline Vicchiarelli; Facilities Director Jeff Mori; IT Director Jim Haprian; Technical Services Director Daniel Barden Assistant Development Director Meghann Marnecheck; Union Representatives, and other interested observers.

President Shlonsky stated: Executive Director Feldman is retiring on August 2, 2019. The Board of Trustees formed a Search Committee that included President Shlonsky, Trustee Spangler and Trustee Varley to start the process of her replacement. The Board also authorized us to hire June Garcia, Library Consultant to search for a new Executive Director. Ms. Garcia submitted twenty-two resumes to the Search Committee, we reviewed those twenty-two applications and we interviewed six applicants. We were very impressed with all the amazing people in the community doing incredible things. After talking to those six applicants it was very clear that one of them was head and shoulders above the others for leading our organization into the future. She stated she would like to propose to the Board that they vote to approve Deputy Director Strobel to serve as our next Executive Director effective August 3, 2019 and authorize President Shlonsky and Trustee Leonard to negotiate a contract with Deputy Director Strobel.

SP7/2019-1

Trustee Varley moved approval, seconded by Trustee DePiero. Seeing no discussion, a motion to approve that Deputy Director Strobel will serve as CCPL's next Executive Director effective August 3, 2019 and to authorize President Shlonsky and Trustee Leonard to negotiate a contract with Deputy Director Strobel was approved by unanimous vote of the Board members present.

Deputy Director Strobel thanked the Board for a great process and their support and their trust in her to lead this organization. She stated Executive Director Feldman has been a wonderful example to follow and thanked her for her many years of mentorship. Deputy Director Strobel is confident that with the example Executive Director Feldman has set for her and others, that we will meet everyone's expectations and hopefully, exceed them and lead this organization on to further greatness. She commented she has the support of an amazing Board of Trustees and she look forward to doing wonderful things together. She thanked the Executive team and Administrative team and the entire staff at CCPL because it's the work that they do to make this organization great in support of the community. She looks forward to continuing our success and our service to the residents of Cuyahoga County and to bring this organization to greater service.

Motion to Adjourn

Seeing no other business under consideration for vote, President Shlonsky asked for a motion to adjourn the meeting.

SP7/2019/2

Upon motion of Trustee DePiero, seconded by Trustee Blakemore, the July 8, 2019 Special Meeting of the Cuyahoga County Public Library adjourned at 1:34 pm.

Approved 23 July 2019

X _____
Patricia A. Shlonsky
President

X _____
Dean E. DePiero
Secretary

Resolution of Appreciation for Deborah McNulty

- WHEREAS,*** Deborah McNulty has served with great loyalty as an employee of Cuyahoga County Public Library since her hire on June 21, 2004, as a Branch Services Assistant I at the Olmsted Falls Branch; on June 5, 2006, she was promoted to a Branch Services Assistant II; on August 17, 2014, she was transferred to the North Olmsted Branch as a Branch Services Assistant II, a position she held until her retirement on July 31, 2019; and,
- WHEREAS,*** she excelled at customer service, and her professional demeanor was welcomed by customers and colleagues; Deborah was a skilled book discussion leader and program presenter at both the North Olmsted and Olmsted Falls branches, and her reader's advisory experience was an asset to both communities; her approachable personality and patience made her a favorite with customers; and,
- WHEREAS,*** she displayed great organizational skills, attention to detail, good judgement, initiative, and dedication to her work; as a Person in Charge, she was always willing to help her co-workers and customers when problems arose; and,
- WHEREAS,*** she maintained a positive attitude, accepted new challenges and changes with grace and enthusiasm, and took pride in her professional work at CCPL.

NOW, THEREFORE, BE IT RESOLVED that the Board of Library Trustees records its appreciation to Deborah McNulty for all the years of service she has rendered to the Library and the public and extends to her all good wishes for a happy, healthy, and rewarding life.

Patricia A. Shlonsky, President
Board of Trustees
Cuyahoga County Public Library
Date: July 23, 2019



EXECUTIVE DIRECTOR'S MESSAGE

Looking Ahead

August 2, 2019, will be my last day as Executive Director of Cuyahoga County Public Library (CCPL). As I transition into retirement after 16 years of leading this superb library system I am filled with pride for all that we have accomplished – and excitement for what lies ahead.

During my tenure as CCPL Executive Director I have had the privilege of working with the best library staff you will find anywhere – and I do mean anywhere. My work with the American Library Association (ALA) has given me opportunities to visit outstanding libraries throughout the U.S. and all over the world. I have experienced excellent library service from coast to coast and abroad. But the best, most dedicated and innovative library staff resides right here in Cuyahoga County. The future of this organization is in good hands.

On July 8, 2019, our Board of Trustees appointed long-time CCPL Deputy Director Tracy Strobel to be my successor after having conducted a national search that yielded several strong candidates. Tracy's career in public libraries began nearly 25 years ago at Medina County District Library. I first met her when we worked together at Cleveland Public Library. Tracy impressed me with her intellect and dedication to the profession – so much so that after I became executive director of CCPL I hired her to be my deputy director, a role she has excelled in for the past 14 years.

Tracy's major accomplishments at CCPL include leading the largest capital improvement program in its history, replacing 10 branches and renovating 14 over seven years. Throughout her career, she has demonstrated a track record of innovation, advocacy and collaboration. She served as the U.S. representative to the Bill and Melinda Gates Foundation's International Network of Emerging Library Innovators (2011-2013) and recently completed a term on the board of the Public Library Association (2016-2019) and ALA's Office for Information Technology Policy Advisory Committee (2015-2019). She currently Chairs ALA's 2020 Census Library Outreach and Education Task Force (2018-2020). Tracy is also a member of the Leadership Cleveland Class of 2015.

I am thrilled for Tracy to have earned the opportunity to advance CCPL's legacy of excellence. I believe she is an excellent fit for the position and I look forward to cheering her and the entire CCPL family on from the sidelines.

As for me, I intend to stay active in the profession, particularly with the ALA Washington Office, as well as with publishers, aggregators and other literary organizations. I hope to get more involved in library policy and to use the skills I developed as a library director and as ALA president to advocate and articulate the value of libraries to media, government and other stakeholders.

I will also continue to write for *Publishers Weekly*, which will give me a venue to contribute more reflections on the work of libraries, my hopes and dreams for libraries in the future, and, of course, to talk about some great books and authors.

After August 2, I don't intend to have an answer to the question, "Where do you work?" But I will be back at ALA conferences in 2020 and beyond. And for the rest of my life, I will always identify as a librarian.

Portions of this letter are excerpted from the *Publishers Weekly* column "ALA 2019: Sari Feldman: So Long, Not Goodbye," published June 7, 2019. Read the article here: <http://bit.ly/32pQZW5>.

Sari Feldman

Executive Director

SYSTEM HIGHLIGHTS

Facebook Fans: 29,351

Twitter Followers: 10,080

Instagram Followers: 3,324

Chef Rocco Whalen kicks off Cuyahoga Cty Public Library's Charlie Cart nutrition education program to a sold out crowd! #librariestransform @clevelanddotcom @fahrenheitCLE @rsblock @Cuyahogalib @gocharliecart, June 29, 2019

Thank you @Cleveland_PL and @CuyahogaLib for the #SummerMeals program! Students in need who live near any Cleveland Public Library or participating Cuyahoga County Public Library can receive a free lunch weekdays.
@BisonPrincipal, June 28, 2019

Awesome program tonight @CuyahogaLib! Got some books for summer reading...hung out with Chef Rocco @Rock1chef and learned more about The Charlie Cart Project. #SummerSelfieBingo #KidderPride @sweetiesiters5, June 27, 2019

Thanks to the @CuyahogaLib for keeping my kiddos motivated to read throughout the summer!!
@MrsNancyBecker, June 24, 2019

PLA would like to recognize Tracy Strobel of @CuyahogaLib, Pam Smith of @ilovemyanythink & Richard Kong of @skokiellibrary, whose terms will end this month, for their dedicated service as members of our board of directors. Thank you! #PLALeadership #ALAAC19
@ALA_PLA, June 24, 2019

Processing Department (PRO) staff helped make thousands of summer reading participants happy by assembling more than 4,000 "Home of a Summer Reader" yard signs. The yard signs have been a hit with customers who are participating in the Library's Grand Slam Summer Reading Program. The PRO team was able to assemble and package the yard signs for shipping in less than a week.

The culminating event for the Parma-Snow Branch's P.A.L.S. (Programs for All Lives) yearlong Innovation Grant programming was held in June. P.A.L.S. programs are designed for all abilities and may include accommodations such as providing additional staff help, offering sensory (sound, light, etc.) alterations and making sure program areas are wheelchair accessible. "P.A.L.S. Prom" was held in the Auditorium with a DJ, games, refreshments and giveaways. More than 50 people from all ages and abilities came to this special prom and many wanted to know when the next one would be held.

During June, 99 kids took part in the Parma Branch's "Summer Fun for Everyone" drop-in program. They wrote, illustrated and bound their own autobiographies in the first week. Over the next two weeks, they created terrific stop-motion animation videos using Play-Doh and LEGO blocks (which they watched on the "big" screen), and made puppets, wrote scripts and performed puppet shows.

Staff member Joe Jones of the Brooklyn Branch used the Charlie Cart mobile kitchen to demonstrate how to "Beat the Heat with Cool Summer Soups." Twenty-two attendees sampled three different soups and learned how to re-create the recipes at home.

Circulation staff from the Berea Branch attended new student orientations at Baldwin Wallace University. They shared information with 85 students and parents about the benefits of owning a CCPL card, passport services and programs.

About 140 students from the neighboring Gemini Center day camp visited the Fairview Park Branch with their counselors to check out books, talk to staff about their favorites and participate in the Grand Slam Summer Reading Program.

Family Place Library at the Brook Park Branch drew 89 people for a puppet show of *The Wizard of Oz* by Stevens Puppets, and an additional 84 people at the Berea City Schools' summer backpack reading program.

Brecksville Branch customers participated in the Library's Grand Slam Summer Reading Program in a fun way by planting a summer reading yard sign in their front yard on Sprague Road and proudly standing beside it waving at cars. They were happy to report that they counted more than 200 waves and more than 40 beeps from passersby.

An elderly customer visited the Maple Heights Branch for computer assistance. Her doctor told her that she could find cheaper prescriptions online or with online coupons. She was prescribed 14 medications daily but could only afford to buy half of them. Staff member Melissa Brown helped her navigate to goodrx.com, a website that her doctor suggested. She typed in the medication she was looking for and there was a coupon for \$22 at CVS. That price was more than half off what she normally paid! She was so happy to know that she could save money on her prescriptions.

Author Michael Dobbs visited the Beachwood Branch to talk about his new book, *The Unwanted: America, Auschwitz, and a Village Caught in Between*. Published in association with the United States Holocaust Memorial Museum, the book tells the story of a small German village whose Jewish families desperately pursued American visas to flee the Nazis. Approximately 110 people attended.

Over a period of four weeks at the Orange Branch, tea connoisseur Judi Slack explored many different types of tea enjoyed in various countries as well as their associated customs, rituals, ceremonies and legends. Seventy-one participants tasted and shared more than 400 cups of tea, a half-pound of biscuits and a pint of cream, all in service of lifelong learning and social engagement.

Case Western Reserve University professor and author Brad Ricca visited the Solon Branch to talk about his book *Mrs. Sherlock Holmes* and its main character, New York lawyer Grace Humiston, who spent her down time in the early 1900s assisting the New York Police Department in solving crimes. Ricca is a very entertaining speaker, and an audience of 21 enjoyed his story of Humiston's race against time to save 18-year-old kidnapping victim Ruth Cruger. This program was supported by the Ohio Humanities Council and the Friends of the Solon Library.

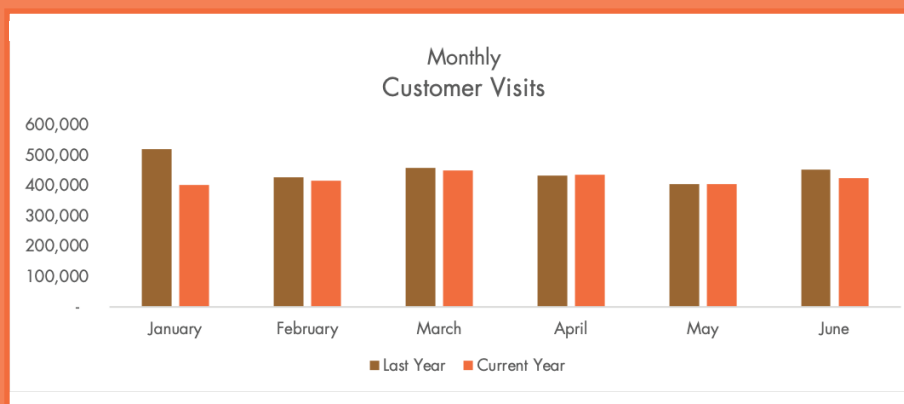
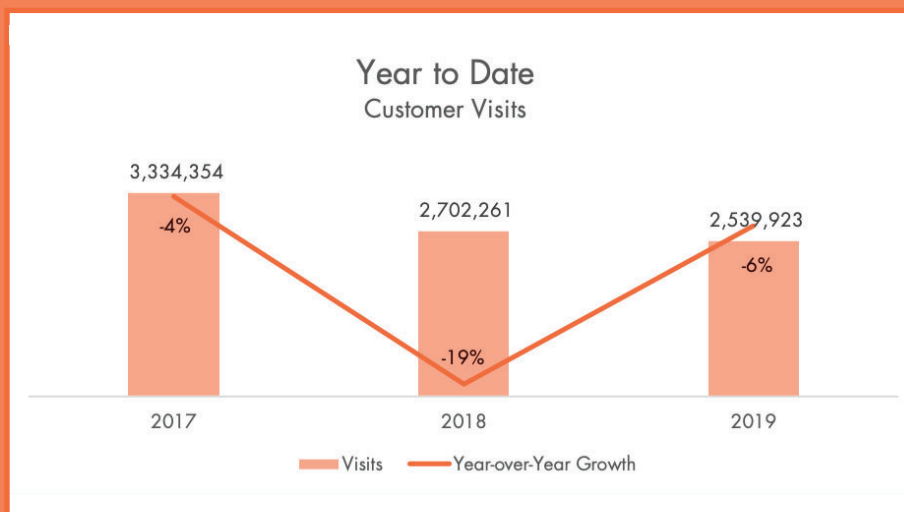
Bill Rubin and Katie Jackson of the Mayfield Branch attended a meeting of the Highland Heights Green Task Force (GTF) to tell them about the Library's downloadable collection and Innovation Center services. The group was very impressed that the Library uses recycled or biodegradable materials in many of its Innovation Center programs and expressed interest in using the space to support their initiatives. The group's leader asked Katie to email her presentation so she could share it with all Highland Heights GTF members.

A Garfield Heights' teen is devoted to using the branch's Innovation Center to its fullest! Recently, he designed his own phone case to fit his phone perfectly using the 3-D printer. He also printed out numbers to insert into the phone case so the back looked like it had binary code on it. He also wants to use the heat press at the branch's next teen Innovation Center drop-in program to make pajamas with binary code on them. He has created a brand name and is branding all his projects, hoping they catch on.

One June 22, the Warrensville Heights Branch hosted its third annual Juneteenth celebration. The program was facilitated by the local nonprofit organization Uplyff, Inc. and funded by the Friends of the Warrensville Heights Library. Nearly 90 customers attended the celebration, which commemorates the actual ending of physical slavery in the United States. Attendees enjoyed live music, engaging discussions, food, art and a presentation about the abolitionists who assisted with the American Underground Railroad.

VISITS

JUNE 2019



**CUYAHOGA COUNTY PUBLIC LIBRARY
REPORT OF THE EXECUTIVE DIRECTOR
JULY 23, 2019**

ACTIVITIES OF THE EXECUTIVE DIRECTOR

June 19

- Participated on In Counsel With Women (ICWW) Executive Committee conference call

June 19 - 23

- Attended ALA 2019 Annual Conference in Washington, D.C.

June 26

- Met with Lisa McAloney, Chief Inspiration Officer, Parker-Hannifin, with Hallie Rich, CCPL Communications and External Relations Director, and Bridget Hawes, CCPL Development Director
- Met with Ellen Mavec, President, The Kelvin and Eleanor Smith Foundation, with Bridget Hawes, CCPL Development Director

June 27 -28

- Vacation

July 1

- Interviewed and filmed with Rick Jackson, Program Host, Ideastream WVIZ, with Hallie Rich, CCPL Communications and External Relations Director, CCPL Warrensville Heights Branch

July 2

- Met with Erin Connor Reif, Executive Director, Connor Foundation, and Allie Connor, Trustee, Connor Foundation, with Hallie Rich, CCPL Communications and External Relations Director, and Bridget Hawes, CCPL Development Director, CCPL Warrensville Heights Branch
- Participated on the DigitalC Finance Committee conference call
- Visited with Ann Morgan and Pat Kulp, Donors, with Bridge Hawes, CCPL Development Director
- Presented with Tracy Strobel, CCPL Deputy Director, at City of Brooklyn Strategic Planning Session

July 8

- Met with Elizabeth Voudouris, Executive Vice President, Business Volunteers Unlimited (BVU)
- Facilitated CCPL Trustees Special Board Meeting

July 9

- Facilitated CCPL Foundation Board Meeting, The Union Club
- Met with Patricia Shlonsky, CCPL Board President and William Leonard, CCPL Trustee with Tracy Strobel, CCPL Deputy Director, Scott Morgan, CCPL Operations Director, and Hallie Rich, CCPL Communications and External Relations Director

July 10-11

- Attended ALA meeting with Alan Inouye, Senior Director, Public Policy & Government Relations, ALA, and others in New York City

July 16

- Met with Maria Spangler, CCPL Trustee
- Talked with Steve Litt, Plain Dealer, and Tracy Strobel, CCPL Deputy Director and Hallie Rich, CCPL Communications & External Relations Director
- Attended retirement lunch in my honor hosted by Umberto Fedeli, President and CEO, The Fedeli Group, with other Community Supporters and CCPL Executive Team

July 17

- Hosted In Council With Women (ICWW) Board meeting, CCPL Orange Branch
- Met with Tish Lowrey, Digital Collection Advisor, OverDrive and Cindy Orr, Digital Collection Advisor, OverDrive
- Attended DigitalC Board Meeting

July 19 & 22

- Vacation

July 23

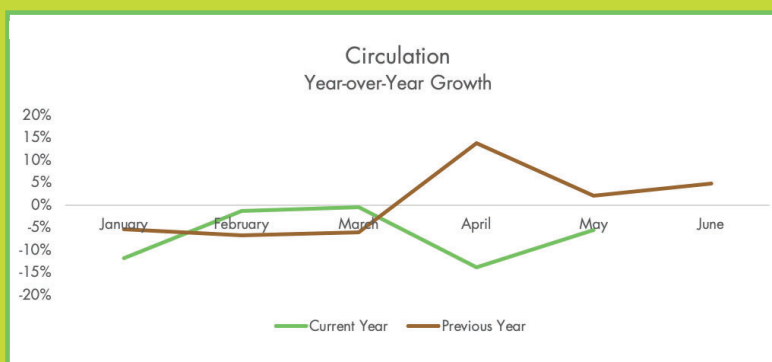
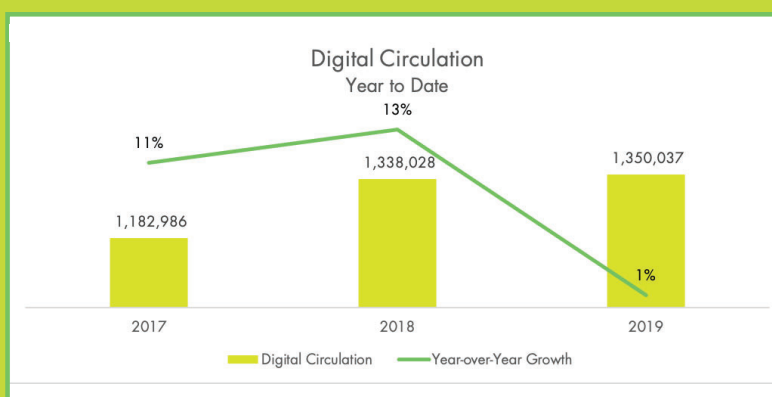
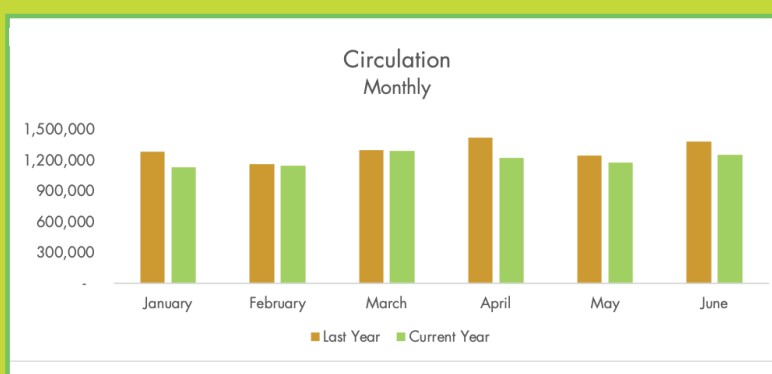
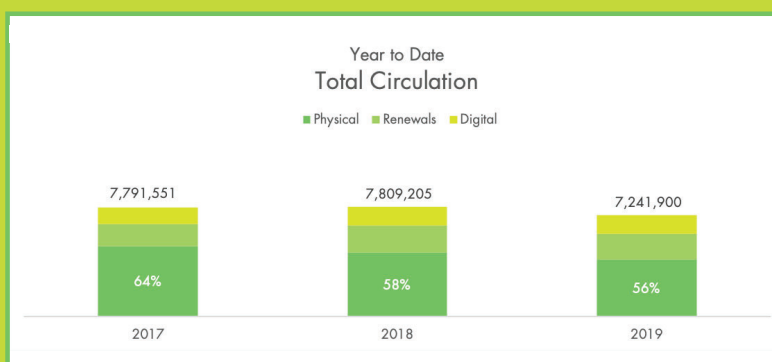
- Facilitated Finance Committee Meeting
- Facilitated Board of Trustees Meeting



Executive Director

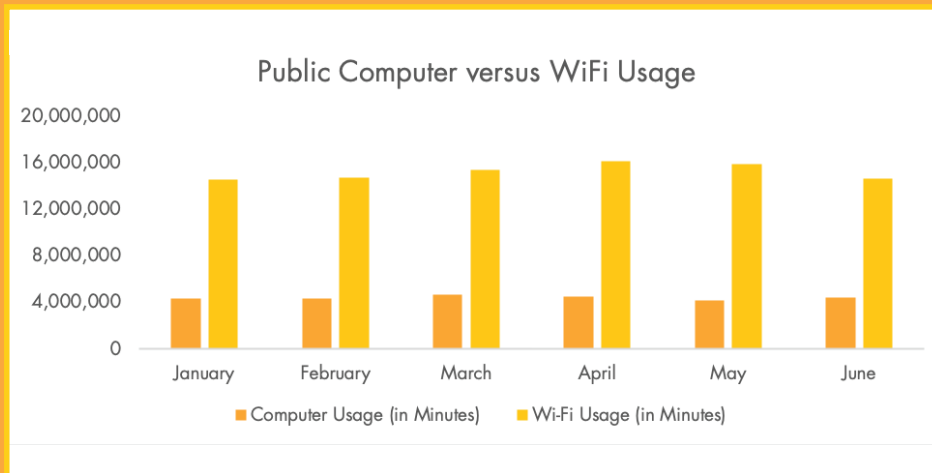
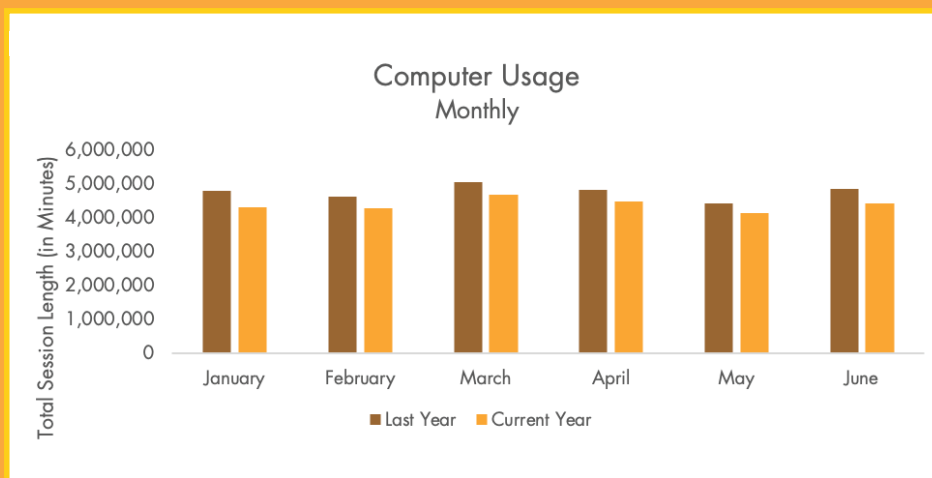
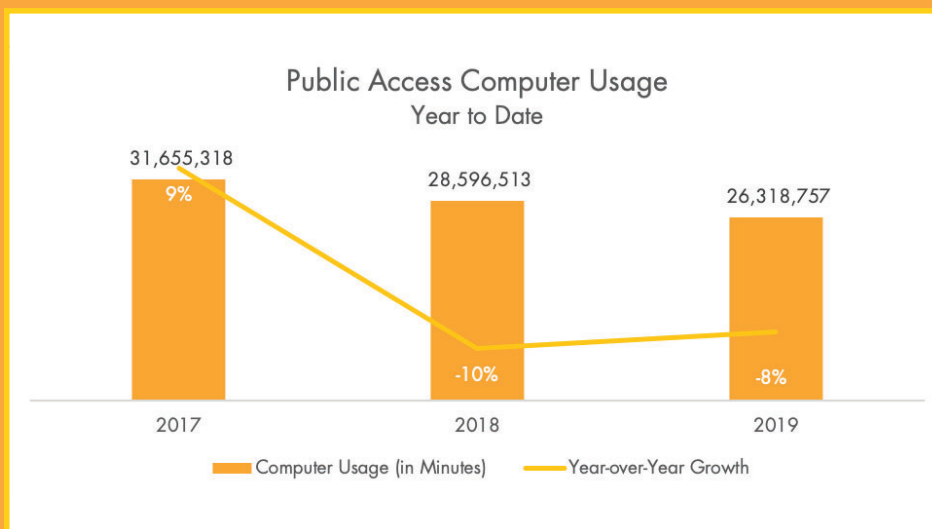
CIRCULATION

JUNE 2019



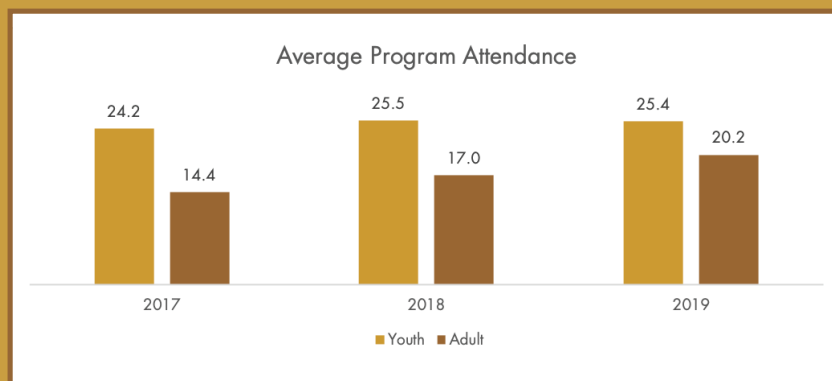
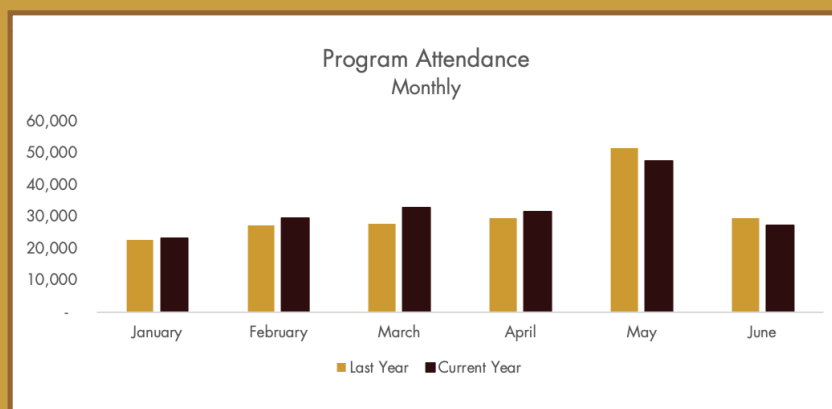
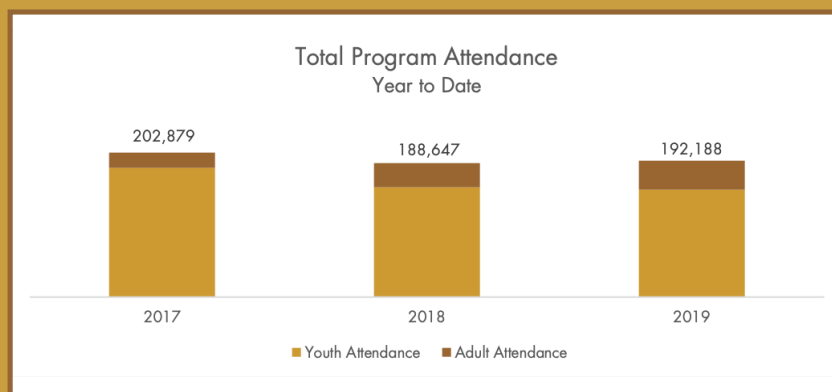
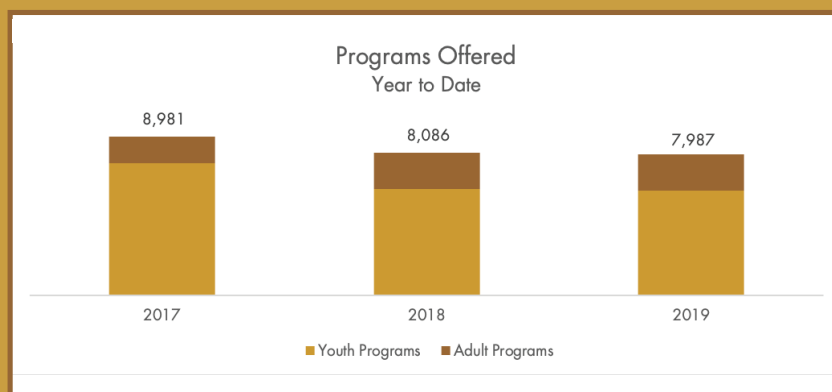
COMPUTER USE

JUNE 2019



PROGRAMS

JUNE 2019



HUMAN RESOURCES DIVISION REPORT LIST NO. 2019-07

July 23, 2019

APPOINTMENTS									
NAME/POSTION	GRADE	SALARY	HOURS WEEK	COST CENTER	REPLACES	SALARY	REASON	HOURS WEEK	EFFECTIVE DATE
Dent, Ryann/College Mentor/Tutor	OSC	\$12.00	12	WVH113	-----	-----	-----	-----	07.08.2019
Durdella, Jordyn/Jr. Tech Corps Intern	OFE	\$9.00	1	PAS113	-----	-----	-----	-----	06.17.2019
Fernandez, Carlos/Jr. Tech Corps Intern	OFE	\$9.00	1	PAS113	-----	-----	-----	-----	06.10.2019
Gaspar, Amber/Branch Services Librarian	U12	\$22.72	40	SEU111	-----	-----	-----	-----	06.24.2019
Hewlett, Jensen/Jr. Tech Corps Intern	OFE	\$9.00	1	PAS113	-----	-----	-----	-----	06.10.2019
Imars, Emily/Jr. Tech Corps Intern	OFE	\$9.00	1	PAS113	-----	-----	-----	-----	06.10.2019
Jones, Angel/Jr. Tech Corps Intern	OFE	\$9.00	1	PAS113	-----	-----	-----	-----	06.10.2019
Martinez, Jennifer/MyComm Coordinator	U10	\$18.14	40	505111	-----	-----	-----	-----	07.01.2019
Matejka, Donald/Page	OEP	\$8.55	15	STV113	Matthew Lam	\$8.80	Resigned	10	07.16.2019
Miguel, Angelica/Jr. Tech Corps Intern	OFE	\$9.00	1	PAS113	-----	-----	-----	-----	06.10.2019
Reeves, Morgan/Branch Services Librarian Supervisor	U13	\$29.43	40	BCH111	Amy Dreger	\$27.73	Transfer	40	07.09.2019
Roberts, Ahleah/Page	OEP	\$8.55	15	BEA113	Jessica Keppler	\$8.80	Resigned	15	07.01.2019
Robinson, Tanisha/Adult Education Services Instructor I	U11	\$23.00	32	508111	-----	-----	-----	-----	06.24.2019
Shareef, Alexander/Jr. Tech Corps Intern	OFE	\$9.00	1	PAS113	-----	-----	-----	-----	06.10.2019
Simon, Latrell/Jr. Tech Corps Intern	OFE	\$9.00	1	PAS113	-----	-----	-----	-----	06.10.2019
Steward, Elizabeth/Development Data Administrator	14	\$20.19	40	401112	-----	-----	-----	-----	07.22.2019
Swartz, Michael/Jr. Tech Corps Intern	OFE	\$9.00	1	PAS113	-----	-----	-----	-----	06.10.2019

HUMAN RESOURCES DIVISION REPORT LIST NO. 2019-07

July 23, 2019

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	CHANGES IN HOURS/SALARY/TRANSFERS												
2	CHANGES IN HOURS/SALARY/TRANSFERS	COST CENTER OLD	COST CENTER NEW	GRADE OLD	GRADE NEW	HOURS OLD	HOURS NEW	SALARY OLD	SALARY NEW	REPLACES	REASON	HRS WEEK	EFFECTIVE DATE
3	Allen, Elyssa/Branch Services Librarian/Branch Services Librarian SUB	BKL111 450114	MHR11 1	U07 U12	U12 U12	32 1	40 1	17.74 22.72	22.72 22.72	-----	Promotion	40 1	07.01.2019
4	Barrett, Megan/Branch Services Librarian Supervisor	WVH111 450114	WVH11 1 450114	U14 U12	U13 U12	40 1	40 1	30.51 30.51	30.51 30.51	Maria Trivisonno	Transfer	40 1	06.17.2019
5	Block, Ronald/Branch Manager	515112	BKL112	38	38	40	40	\$37.42	\$37.42	-----	Acting Assignment Ended	40	07.15.2019
6	Block, Ronald/Branch Manager	BKL112	MDH11 2	38	38	40	40	37.42	37.42	Holly Camino	Transfer	40	07.29.2019
7	Camino, Holly/Branch Manager	MDH11 2	PAR112	38	38	40	40	38.45	38.45	Kathleen Sullivan	Transfer	40	07.29.2019
8	Cottrill, Jean/Branch Services Librarian	GFH111	BAY111	U12	U12	40	40	\$23.63	\$23.63	Maryann Penzvalto	Transfer	40	07.01.2019
9	Cottrill, Jean/Branch Services Librarian I Generalist	SEU111	GFH111	U12	U12	40	40	\$24.34	\$23.63	-----	Acting Assignment Ends	40	06.17.2019
10	Garinger, Carly/Branch Services Assistant II/Branch Services Librarian SUB	BCH111	BCH111 450114	U11	U11 U12	24	24 1	\$20.46	20.46 22.72	-----	Updating second rate	24 1	08.27.2018
11	Hallahan, Erin/Branch Services Assistant II/Branch Services Librarian SUB	GFH111 450114	GFH111 450114	U12 U12	U11 U12	40 1	40 1	22.72 22.72	21.50 22.72	-----	Acting Assignment Ends	40 1	06.17.2019
12	Haller, Maryanne/Branch Services Librarian	BKL111	BRV111	U13	U12	40	20	\$25.45	\$25.21	-----	Acting Assignment Ended	20	07.15.2019
13	Held, Lisa/Adult Education Services Instructor I	508111	508111	U11	U11	20	30	22.44	22.44	-----	Increasing hours	30	04.01.2019
14	Hereford, Sabrina/Branch Services Clerk	450114	GFH111	U07	U07	1	16	15.67	15.67	Alexandra Faidiga	Transfer	16	07.28.2019
15	Johns, Eleanor/Branch Services Assistant I	FPR113	IND111	OSP	U10	15	16	\$8.80	18.14	Judy Suchocki	Promotion	16	07.14.2019
16	Johnson, Stephanie/Branch Services Assistant II/Branch Services Librarian SUB	MHR111 450114	MHR11 1	U11 U12	U11 U12	40 1	20 1	22.72 22.72	21.50 22.72	-----	Acting Assignment Ended	20 1	07.01.2019
17	Khadige, Jonathan/Adult Education Services Program Specialist	508111	508111	U11	U14	40	40	24.17	27.49	Jessica Untch	Acting Assignment Begins	40	07.15.2019
18	Kish, Eric/Branch Services Clerk	PAS113	PAS111	OSP	U07	15	16	\$8.80	\$15.67	Kaiulani Cochrane	Promotion	16	06.17.2019
19	Laessig, Bonnie/Branch Services Assistant I	FPR113	BPK111	OSP	U10	15	20	8.8	18.14	Sarah Slivka	Promotion	20	07.14.2019
20	LeVert, Alexis/Branch Services Assistant I/Branch Services Assistant SUB	BEA111 450114	MHR11 1 450114	U07 U10	U10	16 1	20 1	17.05 18.69	18.69	Barbara Parnell	Promotion	20 1	07.01.0219
21	Lindberg, Sara/Branch Services Librarian	WVH111	MHR11 1	U12	U12	40	40	32.08	32.08	Kyra Nay	Transfer	40	07.15.2019
22	McRill, Michele/Branch Services Clerk/Branch Services Assistant I SUB	SLN113 450114	SLN111 450114	OSP U10	U07 U10	15 1	16 1	8.80 18.14	15.67 18.69	-----	Promotion	16 1	07.28.2019
23	Penny, Nanette/Adult Education Services Recruitment Coordinator/Branch Services Assistant SUB	508111 450114	508111 450114	U11 U10	U11 U10	25 1	34 1	23.12 23.12	23.12 23.12	-----	Increasing hours	34 1	04.29.2019

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	A	B	C	D	E	F	G	H	I	J	K	L	M
24	Sabo, Joseph/Branch Services Assistant I/Branch Services Assistant SUB	BPK113 450114	IND111 450114	OSP U10	U10	15 1	16 1	8.80 18.14	18.14	Judy Stefanko	Promotion	16 1	07.14.2019
25	Salsgiver, Candice/Literacy & Learning Division Clerk/Branch Services Assistant I SUB	BRV111 450114	506111 450114	U11 U10	U06 U10	40 1	40 1	22.70 22.70	21.08 21.08	Joanne Faulhaber	Transfer	40 1	07.14.2019
26	Sawczak, Mary/LLD Clerk/Branch Services Clerk SUB	702111 450114	504111 450114	U04 U07	U04 U07	40 1	40 1	19.12 19.12	19.12 19.12	-----	Department Transfer	40 1	06.17.2019
27	Stewart, Tammy/Branch Services Clerk/Branch Services Assistant I SUB	BEA111 450114	BKL111 450114	U07 U10	U07 U10	32 1	32 1	18.10 18.69	18.10 18.69	-----	Transfer	32 1	07.01.2019
28	Suchocki, Judith/Branch Services Assistant I	IND111	MDH11 1	U10	U10	32	16	\$22.89	\$22.89	-----	Reduction in hours	16	06.17.2019
29	Sullivan, Kathleen/Branch Manager	PAR112	BKL112	38	38	40	40	47.56	47.56	Ronald Block	Transfer	40	07.29.2019
30	Tokarz, Krista/Branch Services Librarian Supervisor	BKL112	BKL111	38	U13	40	40	\$37.07	\$35.99	-----	Acting Assignment Ended	40	07.15.2019
31	Werman, Jill/Page/Branch Services Assistant I SUB	PAR113	PAR113 450114	OSP	OSP U10	15	15 1	\$8.80	8.80 18.14	-----	Correcting 2nd Rate	15 1	11.19.2017
32	Wurch, Lisa/Branch Services Assistant II/Branch Services Librarian SUB/Branch Services Clerk SUB	BEA111 450114	MDH11 1	U11 U12	U11 U12	32 1	20 1	21.50 22.72	21.50 22.72	-----	Acting Assignment Ends	20 1	06.03.2019

HUMAN RESOURCES DIVISION REPORT LIST NO. 2019-07

July 23, 2019

ANNIVERSARY PAY ADJUSTMENTS (Not Based on 2080 Hours)

NAME/POSTION	COST CENTER	GRADE OLD	GRADE NEW	HOURS	SALARY OLD	SALARY NEW	EFFECTIVE DATE
Banez, Mariella/Page	BEA113	OEP	OSP	15	\$8.55	\$8.80	07.14.2019
Feikert, Tina/Page	ORG113	OEP	OSP	15	\$8.55	\$8.80	07.07.2019
Marshall, Threse/Page	SEU113	OEP	OSP	15	\$8.55	\$8.80	07.13.2019
Moreno, Beverly/Branch Services Clerk	BKL111	U07	U07	20	\$15.98	\$16.14	07.02.2019
Robinson, Bernadette/Career Services	508111	U11	U11	40	24.81	25.05	07.30.2019
Coach/Branch Services Assistant SUB	450114	U10	U10	1	24.81	25.05	
Schroeder, Emily/Branch Services Assistant I	SLN111	U10	U10	16	\$18.50	\$18.69	07.15.2019
Tianna Graham/Page	MHR113	OEP	OSP	15	\$8.55	\$8.80	07.30.2019

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July 23, 2019

RESIGNATIONS					
NAME/POSTION	COST CENTER	GRADE	SALARY	HRS WEEK	EFFECTIVE DATE
Biggins, Emily/Homework Mentor	NRY113	OHM	\$18.50	10	06.14.2019
Craig, Beth/Branch Services Clerk SUB	450114	U07	\$15.67	1	05.28.2019
DeLoof, Adam/Page	NRY113	OSP	\$8.80	15	06.19.2019
DeStefanis, Mary Grace/AES Instructor	508113	OSU	\$22.00	15	06.06.2019
Faidiga, Alexandra/Branch Services Clerk	GFH111	U07	\$15.98	24	06.14.2019
Gadus, Sean/Page	GFH113	OSP	\$8.80	15	07.27.2019
Garth, Wendall/AES Instructor II - Corrections	508113	U12	\$24.00	1	05.18.2019
Hughes, Ashley/Homework Mentor	ORG113	OHM	\$18.14	8	05.09.2019
Lam, Matthew/Page	STV113	OSP	\$8.80	10	07.27.2019
Sample, George/Human Resources Director	800112	44	\$62.15	40	05.31.2019
Schofield, JoAnna/Branch Services Librarian I Generalist	WVH111	U12	\$23.63	40	06.21.2019
Steidle, Brittany/Homework Mentor	BAY113	OHM	\$18.14	5	07.09.2019
Zheng, Talia/Page	BAY113	OSP	\$8.80	15	08.03.2019

RETIREMENTS						
NAME/POSTION	COST CENTER	GRADE	SALARY	HRS WEEK	HIRE DATE	LAST WORKING DAY
Feldman, Sari/Executive Director	400112	OSD	\$115.38	40	06.02.2003	08.02.2019
McNulty, Deborah/Branch Services Assistant II	NOL111	U11	\$23.82	16	06.21.2004	07.31.2019

HUMAN RESOURCES DIVISION REPORT LIST NO. 2019-07

July 23, 2019

CONFERENCE AND MEETING ATTENDANCE				
NAME	DATE (\$)	AMOUNT	MILEAGE	MEETING
Boxler, Julia	10.02.2019 - 10.04.2019	\$614.56	\$ -	2019 Achieving Together/Library Journal and School Library Journal/Indianapolis, IN
Chromik, George	08.07.19 - 08.08.19	\$798.02	\$ 88.02	Ohio GFOA Advanced Accounting Seminar/GFOA/Put-In-Bay, OH
Chromik, George	09.18.19 - 09.20.19	\$1,359.72	\$ 144.72	Ohio GFOA 32nd Annual Conference/GFOA/Columbus, OH
Echols, Terrance	05.21.2019	\$102.42	\$ -	Realizing the Potential of Northeast Ohio's Global Talent/Tri C Corporate College/Warrensville Heights, OH
Jankowski, Pamela	10.02.2019 - 10.04.2019	\$729.26	\$ 332.64	2019 Achieving Together/Library Journal and School Library Journal/Indianapolis, IN
Karaffa, Michael	07.27.2019	\$48.64	\$ 8.64	Extend Your Growing Season: A Fall Harvest/Cleveland Botanical Garden/Cleveland, OH
		\$3,652.62		

Financial Statement Analysis

June 2019

Revenues

For General Property Taxes we received a very small amount for the first half of the year settlement. We should begin to see in July our next large advance for the second half of the year. With this distribution we are on budget for property taxes.

Our June distribution for the PLF was again larger than what we received last year. As I mentioned last month, we believe the collections moving forward should be slightly larger to bring us back to budget but, as we do every month, we will monitor this account closely. With this larger distribution we are on budget for the PLF.

Interest is also exceeding our original estimates. The larger increase in rates than expected has brought in additional revenue. Based on some of our recent maturities we are beginning to see some of those increases leveling off.

Patron Fines and Fees in total are currently exceeding our estimates. Once again it is passport fees and photos which are the reason for the increase. Sale of Resale Supplies is also slightly exceeding our estimates.

All other revenue accounts are where we would expect them to be for the month and the year.

Expenses

Expenses for Salaries and Benefits showed a slight increase over budget in May which was expected because of three payrolls posted to the account, but for the month of June we are once again back within our budget. Our next three pay month is later in the year. And as we have mentioned since the beginning of the year, we see the account for health insurance is much closer to being back in budget with those early funding of the HSA accounts.

Many of the other expense accounts have higher than expected percentages for expenses and encumbrances because many of these accounts have standing orders encumbered against them to pay monthly and recurring expenses.

All other General Fund expense accounts are where we would expect them to be for the month and the year.

In the Capital Fund projects the final expenses for the Maple Heights renovation were paid. The only projects open are the Bay Village and Richmond Heights Branches.

Investments

We purchased one piece of commercial paper from Toronto Dominion Securities with a yield of 2.44% and a four month maturity.

We also purchased a CD from Multi-Bank Securities/Ally Bk Midvale with a yield of 2.50% and a three maturity. Our advisor from RedTree Investments felt these yields were good yields for us to look at some longer maturities for those securities.

Transfers

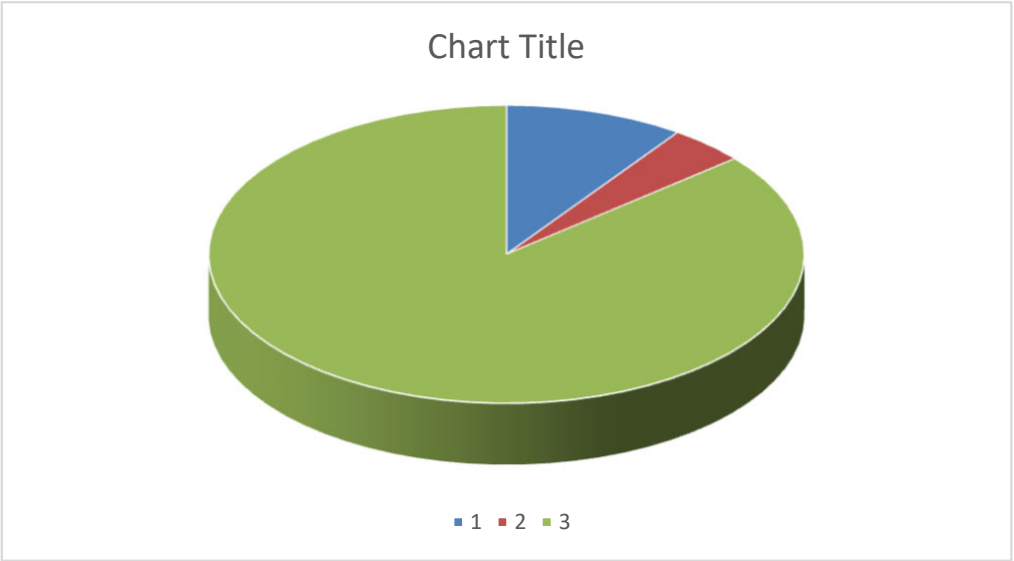
There was one transfer for the month in the amount of \$71,400.00 from the General Fund to the Adult Education Services (ASPIRE) fund for the Library match.

CUYAHOGA COUNTY PUBLIC LIBRARY										General Fund
REVENUE										50% of Year
Fiscal 2019 -June										
Acct. No.	General Fund Line Item Description	2019 Revenue	2018 Final Revenue	2019 MTD Received	2018 MTD Received	2019 YTD Received	2018 YTD Received	2019 % Received	2019 Balance	Notes
1200	General Property Taxes	\$37,859,310.00	\$38,085,182.73	\$706.72	\$0.00	\$21,061,115.93	\$21,759,304.30	55.6%	(\$16,798,194.07)	
1250	Intergovernmental	\$25,634,817.35	\$25,409,713.62	\$1,963,658.36	\$1,890,244.31	\$12,909,422.05	\$12,464,699.05	50.4%	(\$12,725,395.30)	
	Public Library Fund	\$20,994,127.35	\$20,769,026.45	\$1,963,658.36	\$1,890,244.31	\$10,632,229.74	\$10,151,476.76	50.6%	(\$10,361,897.61)	
	Property Taxes	\$4,640,690.00	\$4,640,687.17	\$0.00	\$0.00	\$2,277,192.31	\$2,313,222.29	49.1%	(\$2,363,497.69)	
2200	Grants	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$0.00	
2300	Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$0.00	
3100	Patron Fines & Fees	\$1,350,000.00	\$1,356,592.28	\$110,755.74	\$127,278.95	\$799,114.87	\$780,141.67	59.2%	(\$550,885.13)	
	Fines and Fees Income	\$350,000.00	\$373,364.63	\$28,840.49	\$25,620.20	\$148,278.90	\$205,192.77	42.4%	(\$201,721.10)	
	Passport Fee	\$732,000.00	\$716,086.40	\$61,040.00	\$75,500.00	\$487,970.00	\$415,016.40	66.7%	(\$244,030.00)	
	Passport Photo Fee	\$250,000.00	\$249,460.00	\$19,679.00	\$22,840.00	\$153,775.97	\$149,520.00	61.5%	(\$96,224.03)	
	Meeting Room Rental Fees	\$18,000.00	\$17,681.25	\$1,196.25	\$3,318.75	\$9,090.00	\$10,412.50	50.5%	(\$8,910.00)	
4000	Interest	\$80,000.00	\$38,929.65	\$11,782.59	\$128.23	\$104,254.04	\$1,169.69	130.3%	\$24,254.04	
5500	Services Provided Other Entities	\$2,500.00	\$2,710.43	\$42.50	\$297.00	\$1,513.82	\$2,097.64	60.6%	(\$986.18)	
6100	Restricted Gifts	\$0.00	\$33,619.90	\$105.18	\$123.78	\$20,420.88	\$7,959.57	0.0%	\$20,420.88	
6500	Unrestricted Gifts	\$55,000.00	\$22,453.56	\$2,000.00	\$3,600.00	\$19,661.27	\$22,240.49	35.7%	(\$35,338.73)	
8100	Sale of Property	\$22,000.00	\$10,786.43	\$0.00	\$0.00	\$8,563.00	\$602.00	38.9%	(\$13,437.00)	
8200	Sale of Resale Supplies	\$107,225.00	\$125,016.94	\$9,720.13	\$11,035.33	\$63,334.04	\$64,834.16	59.1%	(\$43,890.96)	
8300	Rental of Real Property	\$0.00	\$23,481.00	\$1,925.50	\$4,813.75	\$11,553.00	\$17,704.50	0.0%	\$11,553.00	
8700	Refunds and Reimbursements	\$445,775.00	\$395,639.95	\$4,206.29	\$3,883.44	\$74,656.28	\$34,679.93	16.7%	(\$371,118.72)	
8900	Miscellaneous	\$25,000.00	\$38,992.37	\$4,572.48	\$34,465.80	\$4,572.48	\$34,465.80	18.3%	(\$20,427.52)	
9800	Advances In	\$25,084.06	\$72,108.25	\$0.00	\$0.00	\$0.00	\$72,108.25	0.0%	(\$25,084.06)	
9900	Transfers In	\$0.00	\$1,873.72	\$0.00	\$0.00	\$30,406.56	\$0.00	0.0%	\$30,406.56	
	Carryover	\$1,851,996.98	\$500,000.00	\$0.00	\$0.00	\$1,851,996.98	\$500,000.00	100.0%	\$0.00	
TOTAL -- General Fund		\$67,458,708.39	\$66,117,100.83	\$2,109,475.49	\$2,075,870.59	\$36,960,585.20	\$35,762,007.05	54.8%	(\$30,498,123.19)	
TOTAL -- Capital Fund - 402		\$200,000.00	\$3,433,289.13	\$72,527.52	\$37,050.02	\$202,094.18	\$198,504.75	0.0%	\$2,094.18	
TOTAL -- Note Retirement Fund - 301		\$4,665,506.00	\$4,665,481.00	\$0.00	\$0.00	\$4,665,506.00	\$4,665,481.00	100.0%	\$0.00	
TOTAL -- Trust Fund (Regular) - 701		\$250,000.00	\$350,211.38	\$6,187.16	\$5,359.62	\$64,243.13	\$70,113.64	25.7%	(\$185,756.87)	
TOTAL -- Trust Fund (Special) - 702		\$20,000.00	\$712,900.71	\$85,227.46	\$3,848.01	\$92,872.53	\$19,777.47	464.4%	\$72,872.53	
TOTAL -- Endowment Fund - 801		\$1,000.00	\$1,543.28	\$162.83	\$128.48	\$995.25	\$661.97	99.5%	(\$4.75)	
TOTAL -- Agency Fund (FSA) - 901		\$80,000.00	\$100,414.94	\$8,236.66	\$8,311.06	\$50,744.96	\$49,866.36	63.4%	(\$29,255.04)	
TOTAL -- Project Build - 223		\$10,000.00	\$1,149.24	\$0.00	\$0.00	\$1,149.24	\$0.00	11.5%	(\$8,850.76)	
TOTAL -- Entrepreneurships Adult & Youth - 232		\$1,625.00	\$36,975.00	\$0.00	\$0.00	\$0.00	\$9,975.00	0.0%	(\$1,625.00)	
TOTAL -- Cleve Found Encore Initiative - 236		\$0.00	\$46,659.29	\$0.00	\$0.00	\$0.00	\$24,409.29	0.0%	\$0.00	
TOTAL -- My Com Neighborhood - 242		\$200,299.84	\$103,094.83	\$50,000.00	\$0.00	\$50,000.00	\$58,094.83	25.0%	(\$150,299.84)	
TOTAL -- Memory Lab Grant - 243		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$0.00	
TOTAL -- WVH Garden Grant - 244		\$2,000.00	\$1,000.00	\$0.00	\$0.00	\$2,000.00	\$1,000.00	100.0%	\$0.00	
TOTAL -- Adult Education Services - 247		\$2,298,388.32	\$1,378,848.54	\$158,713.78	\$19,434.86	\$568,150.07	\$363,322.97	24.7%	(\$1,730,238.25)	
TOTAL -- Project Learn - 248		\$359,193.02	\$358,293.23	\$27,060.04	\$28,200.20	\$98,079.82	\$146,009.23	27.3%	(\$261,113.20)	
TOTAL -- Baby Club - 249		\$43,762.12	\$38,453.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	(\$43,762.12)	
TOTAL -- IPAD Lab - 253		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$0.00	
TOTAL -- Food & Culinary Literacy Program		\$28,000.00	\$65,500.00	\$0.00	\$50,000.00	\$28,000.00	\$50,000.00	100.0%	\$0.00	
TOTAL -- Hotspot Lending Program		\$50,809.00	\$41,934.00	\$0.00	\$0.00	\$22,500.00	\$0.00	44.3%	(\$28,309.00)	
TOTAL -- Homework Centers - 270		\$434,085.00	\$300,103.84	\$6,000.00	\$65,000.00	\$127,000.00	\$129,000.00	29.3%	(\$307,085.00)	
TOTAL -- Summer Camps - 280		\$120,000.00	\$103,534.16	\$56,840.00	\$35,000.00	\$64,340.00	\$40,000.00	53.6%	(\$55,660.00)	
TOTAL -- Kindergarten & Baby Kits - 290		\$20,000.00	\$13,500.00	\$0.00	\$0.00	\$20,000.00	\$0.00	100.0%	\$0.00	
TOTAL -- Special School Program. - 293		\$373,601.25	\$180,998.41	\$12,375.00	\$5,566.89	\$116,783.45	\$69,840.14	31.3%	(\$256,817.80)	
GRAND TOTAL -- All Funds		\$76,616,977.94	\$78,050,984.81	\$2,592,805.94	\$2,333,769.73	\$43,135,043.83	\$41,658,063.70	56.3%	(\$33,481,934.11)	

CUYAHOGA COUNTY PUBLIC LIBRARY												
BUDGET EXPENDITURE STATUS												
Fiscal 2019 -June												
50% of Year												
Acct. No.	General Fund Line Item Description	2019 Appropriation	2018 C/O Encumbrance	2018 Final Expended	2019 MTD Expended	2018 MTD Expended	2019 YTD Expended	2018 YTD Expended	2019 Enc + PY Enc	2019 Exp+Enc	2019 % Exp+Enc	2019 Balance
1000s	SALARIES & BENEFITS	56.4%										
1110	Salaries	\$28,000,000.00	\$0.00	\$28,038,950.21	\$2,087,434.90	\$2,119,160.16	\$14,053,190.39	\$14,004,097.27	\$0.00	\$14,053,190.39	50.2%	\$13,946,809.61
1400	Retirement Benefits-Employer	\$3,919,245.00	\$0.00	\$3,904,278.21	\$293,084.01	\$299,096.82	\$1,970,606.57	\$1,959,888.71	\$0.00	\$1,970,606.57	50.3%	\$1,948,638.43
1600	Insurance Benefits-Employer	\$6,070,142.00	\$0.00	\$5,472,877.37	\$457,790.77	\$462,305.39	\$3,186,768.96	\$2,920,618.44	\$0.00	\$3,186,768.96	52.5%	\$2,883,373.04
1900	Other Employee Benefits	\$60,613.00	\$0.00	\$58,178.74	\$690.00	\$1,361.85	\$11,311.49	\$9,426.16	\$0.00	\$11,311.49	18.7%	\$49,301.51
	SUBTOTAL -- SALARIES & BENEFITS	\$38,050,000.00	\$0.00	\$37,474,284.53	\$2,838,999.68	\$2,881,924.22	\$19,221,877.41	\$18,894,030.58	\$0.00	\$19,221,877.41	50.5%	\$18,828,122.59
2000s	SUPPLIES	2.1%										
2100	General Administrative Supplies	\$696,035.00	\$18,326.44	\$628,227.86	\$73,889.31	\$86,038.19	\$307,213.18	\$317,995.40	\$321,160.53	\$628,373.71	88.0%	\$85,987.73
2200	Property Maintenance & Repair Supplies	\$368,415.00	\$1,050.00	\$298,082.48	\$16,903.93	\$40,125.55	\$152,293.89	\$195,735.31	\$214,919.34	\$367,213.23	99.4%	\$2,251.77
2300	Motor Equipment Fuel & Supplies	\$105,665.00	\$830.04	\$92,977.86	\$5,441.56	\$6,843.48	\$36,973.01	\$46,322.98	\$63,880.43	\$100,853.44	94.7%	\$5,641.60
2500	Supplies for Resale	\$229,885.00	\$0.00	\$148,494.30	\$2,126.90	\$0.00	\$48,281.00	\$102,726.39	\$116,611.00	\$164,892.00	71.7%	\$64,993.00
	SUBTOTAL -- SUPPLIES	\$1,400,000.00	\$20,206.48	\$1,167,782.50	\$98,361.70	\$133,007.22	\$544,761.08	\$662,780.08	\$716,571.30	\$1,261,332.38	88.8%	\$158,874.10
3000s	PURCHASED & CONTRACTED SERVICES	15.6%										
3100	Travel & Meeting Expenses	\$167,810.00	\$0.00	\$178,640.91	\$20,802.06	\$13,285.85	\$80,095.97	\$80,553.99	\$0.00	\$80,095.97	47.7%	\$87,714.03
3200	Communications-Printing & Publications	\$1,111,960.00	\$750.00	\$809,582.34	\$80,963.33	\$68,843.57	\$425,415.60	\$415,610.26	\$167,634.89	\$593,050.49	53.3%	\$519,659.51
3300	Property Maintenance & Repair Service	\$2,990,052.00	\$49,224.69	\$2,685,945.06	\$47,343.06	\$360,089.35	\$1,115,868.70	\$1,370,767.53	\$1,922,848.52	\$3,038,717.22	100.0%	\$559.47
3400	Insurance	\$302,500.00	\$0.00	\$259,684.00	\$0.00	\$436.00	\$47,744.00	\$44,352.00	\$254,756.00	\$302,500.00	100.0%	\$0.00
3500	Rents and Leases	\$832,855.00	\$0.00	\$766,467.97	\$115,810.60	\$69,992.28	\$428,720.79	\$392,686.98	\$400,086.15	\$828,806.94	99.5%	\$4,048.06
3600	Utilities	\$1,676,380.00	\$0.00	\$1,703,600.27	\$108,953.18	\$137,390.78	\$805,537.21	\$935,536.62	\$0.00	\$805,537.21	48.1%	\$870,842.79
3700	Professional Services	\$1,843,273.00	\$24,382.00	\$2,260,765.84	\$367,343.13	\$403,536.81	\$1,069,549.66	\$1,459,993.26	\$511,943.89	\$1,581,493.55	84.7%	\$286,161.45
3900	Other Contracted Services	\$1,575,170.00	\$0.00	\$1,527,418.17	\$49,185.03	\$415,269.98	\$989,160.75	\$981,448.23	\$579,700.48	\$1,568,861.23	99.6%	\$6,308.77
	SUBTOTAL -- CONTRACTED SERVICES	\$10,500,000.00	\$74,356.69	\$10,192,104.56	\$790,400.39	\$1,468,844.62	\$4,962,092.68	\$5,680,948.87	\$3,836,969.93	\$8,799,062.61	83.2%	\$1,775,294.08
4000s	LIBRARY MATERIALS & INFORMATION	13.2%										
4100	Books & Pamphlets	\$5,190,953.00	\$318,318.88	\$5,760,436.64	\$371,146.51	\$424,777.16	\$2,951,140.41	\$3,404,230.45	\$566,274.57	\$3,517,414.98	63.8%	\$1,991,856.90
4200	Periodicals	\$268,020.00	\$10.00	\$187,694.61	\$413.40	\$411.96	\$12,137.62	\$10,019.38	\$10.00	\$12,147.62	4.5%	\$255,882.38
4300	Audiovisual Material	\$2,120,059.00	\$207,574.96	\$1,546,354.32	\$91,072.84	\$86,930.32	\$1,047,883.96	\$842,604.66	\$244,615.77	\$1,292,499.73	55.5%	\$1,035,134.23
4500	Computer Services & Information	\$1,260,986.00	\$0.00	\$1,249,748.68	\$159,347.66	\$142,288.40	\$690,526.25	\$626,332.88	\$0.00	\$690,526.25	54.8%	\$570,459.75
4700	Library Material Repair & Restoration	\$1,000.00	\$0.00	\$189.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$1,000.00
4900	Library Materials-Other	\$62,482.00	\$2,777.86	\$32,958.92	\$900.50	\$3,183.02	\$4,551.89	\$12,032.25	\$2,776.19	\$7,328.08	11.2%	\$57,931.78
	SUBTOTAL -- LIBRARY MATERIALS	\$8,903,500.00	\$528,681.70	\$8,777,382.17	\$622,880.91	\$657,590.86	\$4,706,240.13	\$4,895,219.62	\$813,676.53	\$5,519,916.66	58.5%	\$3,912,265.04
5000s	CAPITAL OUTLAY	4.7%										
5100	Purchase of Land	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$0.00
5400	Building Improvements	\$800,000.00	\$308,761.30	\$826,905.18	\$81,011.10	\$339,482.97	\$344,472.26	\$406,143.96	\$546,566.77	\$891,039.03	80.4%	\$217,722.27
5500	Furniture & Equipment	\$2,305,000.00	\$116,902.11	\$421,589.50	\$7,307.92	\$196,406.87	\$204,966.75	\$257,821.84	\$125,528.22	\$330,494.97	13.6%	\$2,091,407.14
5700	Motor Vehicles	\$95,000.00	\$0.00	\$190,013.50	\$0.00	\$69,981.50	\$83,906.50	\$190,013.50	\$0.00	\$83,906.50	88.3%	\$11,093.50
	SUBTOTAL -- CAPITAL OUTLAY	\$3,200,000.00	\$425,663.41	\$1,438,508.18	\$88,319.02	\$605,871.34	\$633,345.51	\$853,979.30	\$672,094.99	\$1,305,440.50	36.0%	\$2,320,222.91
7000s	OTHER OBJECTS	0.1%										
7100	Dues and Memberships	\$43,015.00	\$0.00	\$43,929.99	\$140.00	\$663.59	\$38,409.74	\$34,870.00	\$0.00	\$38,409.74	89.3%	\$4,605.26
7200	Taxes and Assessments	\$31,990.00	\$0.00	\$32,559.86	\$7,012.34	\$7,076.56	\$24,392.36	\$23,254.62	\$0.00	\$24,392.36	76.2%	\$7,597.64
7500	Refunds and Reimbursements	\$7,495.00	\$0.00	\$5,384.83	\$38.12	\$180.17	\$498.13	\$2,161.30	\$0.00	\$498.13	6.6%	\$6,996.87
7900	Other Miscellaneous Expenses	\$2,500.00	\$0.00	\$684.50	\$0.00	\$0.00	\$1,788.96	\$163.50	\$0.00	\$1,788.96	71.6%	\$711.04
	SUBTOTAL -- OTHER OBJECTS	\$85,000.00	\$0.00	\$82,559.18	\$7,190.46	\$7,920.32	\$65,089.19	\$60,449.42	\$0.00	\$65,089.19	76.6%	\$19,910.81
8000s	CONTINGENCY	0.3%										
8999	Contingency	\$170,208.39	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$170,208.39
	SUBTOTAL -- CONTINGENCY	\$170,208.39	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$170,208.39
9000s	TRANSFERS OUT	7.6%										
9899	Advances to Other Funds	\$0.00	\$0.00	\$25,084.06	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$0.00
9999	Transfers to Other Funds	\$5,150,000.00	\$0.00	\$5,002,352.91	\$71,400.00	\$0.00	\$4,816,186.83	\$4,712,640.29	\$0.00	\$4,816,186.83	93.5%	\$333,813.17
	SUBTOTAL -- TRANSFERS OUT	\$5,150,000.00	\$0.00	\$5,027,436.97	\$71,400.00	\$0.00	\$4,816,186.83	\$4,712,640.29	\$0.00	\$4,816,186.83	93.5%	\$333,813.17
	GRAND TOTAL -- General Fund	\$67,458,708.39	\$1,048,908.28	\$64,160,058.09	\$4,517,552.16	\$5,755,158.58	\$34,949,592.83	\$35,760,048.16	\$6,039,312.75	\$40,988,905.58	59.8%	\$27,518,711.09

CUYAHOGA COUNTY PUBLIC LIBRARY												
BUDGET EXPENDITURE STATUS												
Fiscal 2019 -June												
50% of Year												
FUND	Line Item Description	2019 Appropriation	2018 C/O Encumbrance	2018 Final Expended	2019 MTD Expended	2018 MTD Expended	2019 YTD Expended	2018 YTD Expended	2019 ENC + PY Enc	2019 Exp+Enc	2019 % Exp+Enc	2019 Balance
223	TOTAL -- Project Build	\$10,000.00	\$0.00	\$1,149.24	\$0.00	\$0.00	\$323.71	\$1,058.61	\$0.00	\$323.71	3.2%	\$9,676.29
232	TOTAL -- Entrepreneurships Adult & Youth	\$65,090.26	\$0.00	\$55,558.33	\$3,250.00	\$6,875.00	\$17,604.17	\$31,111.64	\$3,250.00	\$20,854.17	32.0%	\$44,236.09
236	TOTAL -- Cleveland Foundation Encore Initiative	\$17,199.21	\$0.00	\$41,905.37	\$0.00	\$0.00	\$17,199.21	\$14,604.58	\$0.00	\$17,199.21	100.0%	\$0.00
242	TOTAL -- MyCom Neighborhood	\$221,525.50	\$0.00	\$81,872.23	\$17,180.00	\$7,219.26	\$46,308.90	\$36,722.15	\$5,000.00	\$51,308.90	23.2%	\$170,216.60
243	TOTAL -- Memory Lab	\$8,468.18	\$0.00	\$47,910.23	\$0.00	\$17,323.12	\$3,135.28	\$34,847.32	\$0.00	\$3,135.28	37.0%	\$5,332.90
244	TOTAL -- WVH Garden Grant	\$3,041.09	\$0.00	\$3,365.65	\$627.45	\$451.68	\$1,771.27	\$1,916.87	\$0.00	\$1,771.27	58.2%	\$1,269.82
247	TOTAL -- Adult Education Services	\$2,335,471.99	\$0.00	\$1,341,764.87	\$203,285.72	\$154,302.04	\$735,045.95	\$624,517.20	\$101,849.86	\$836,895.81	35.8%	\$1,498,576.18
248	TOTAL -- Project Learn	\$554,054.42	\$0.00	\$278,389.96	\$33,996.19	\$21,306.93	\$183,058.18	\$160,914.93	\$3,414.68	\$186,472.86	33.7%	\$367,581.56
249	TOTAL -- Baby Club	\$81,250.53	\$0.00	\$14,921.58	\$3,359.50	\$67.40	\$28,383.23	\$5,320.90	\$13,259.50	\$41,642.73	51.3%	\$39,607.80
253	TOTAL -- IPAD Lab	\$1,638.36	\$0.00	\$5,486.64	\$0.00	\$0.00	\$0.00	\$5,486.64	\$0.00	\$0.00	0.0%	\$1,638.36
256	TOTAL -- Food & Culinary Literacy Programs	\$70,600.00	\$0.00	\$22,900.00	\$3,337.97	\$0.00	\$28,802.84	\$0.00	\$4,633.32	\$33,436.16	47.4%	\$37,163.84
257	TOTAL -- Hotspot Lending Program	\$50,809.00	\$0.00	\$41,934.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$50,809.00
270	TOTAL -- Homework Centers	\$473,969.37	\$0.00	\$282,913.12	\$4,603.42	\$6,745.14	\$164,398.48	\$155,645.91	\$2,640.76	\$167,039.24	35.2%	\$306,930.13
280	TOTAL -- Summer Camps	\$125,000.00	\$0.00	\$106,034.16	\$16,937.00	\$0.00	\$17,053.32	\$0.00	\$90,085.00	\$107,138.32	85.7%	\$17,861.68
290	TOTAL -- Kindergarten & Baby Kits	\$33,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$21,742.46	\$0.00	\$558.00	\$22,300.46	66.6%	\$11,199.54
293	TOTAL -- Special School Programming	\$373,601.25	\$0.00	\$212,875.96	\$14,200.31	\$13,068.45	\$100,897.04	\$97,464.50	\$43,173.30	\$144,070.34	38.6%	\$229,530.91
301	TOTAL -- Note Retirement Fund	\$4,665,506.00	\$0.00	\$4,665,481.26	\$0.00	\$0.00	\$1,075,253.13	\$1,112,740.63	\$0.00	\$1,075,253.13	23.0%	\$3,590,252.87
402	TOTAL -- Capital Fund	\$7,000,000.00	\$137,830.74	\$6,709,357.06	\$120,883.26	\$251,961.47	\$382,494.35	\$5,318,193.10	\$436,231.86	\$818,726.21	11.5%	\$6,319,104.53
701	TOTAL -- Trust Fund (Regular)	\$140,000.00	\$12,256.37	\$855,404.56	\$5,253.52	\$1,050.23	\$31,716.23	\$14,356.59	\$22,276.66	\$53,992.89	35.5%	\$98,263.48
702	TOTAL -- Trust Fund (Special)	\$70,000.00	\$35,550.00	\$2,410,574.17	\$3,530.94	\$0.00	\$77,692.24	\$106,808.00	\$3,250.00	\$80,942.24	76.7%	\$24,607.76
801	TOTAL -- Endowment Fund	\$75,000.00	\$0.00	\$822.64	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$75,000.00
901	TOTAL -- Agency Fund (FSA)	\$110,000.00	\$0.00	\$100,000.00	\$7,064.92	\$5,358.09	\$60,870.77	\$62,849.02	\$0.00	\$60,870.77	55.3%	\$49,129.23
	GRAND TOTAL -- All Funds	\$16,485,725.16	\$185,637.11	\$17,280,621.03	\$437,510.20	\$485,728.81	\$2,993,750.76	\$7,784,558.59	\$729,622.94	\$3,723,373.70	22.3%	\$12,947,988.57

CUYAHOGA COUNTY PUBLIC LIBRARY							
Capital Fund Balances							
Fiscal 2019 --June							
FUND	CC	Project Budget	2018 Expenditures	Expenditures To Date (1)	Encumbered & Unpaid (2)	Project Balance (3)	STATUS
Capital Fund - 402							
Bay	004	\$7,500,000.00	\$201,232.64	\$416,761.14	\$418,867.36	\$6,664,371.50	
Maple Heights	037	\$550,000.00	\$127,912.15	\$510,363.92	\$0.00	\$39,636.08	COMPLETED
Richmond	070	\$2,000,000.00	\$52,093.50	\$52,093.50	\$0.00	\$1,947,906.50	
Total Capital Fund - 402		\$10,050,000.00	\$381,238.29	\$979,218.56	\$418,867.36	\$8,651,914.08	



CUYAHOGA COUNTY PUBLIC LIBRARY				
All Funds Cash Balance				
Fiscal 2019 --June 2019				
Fund	Beginning Cash Balance	Receipts To Date	Expenditures To Date	Cash Balance
General Fund	\$2,900,905.26	\$35,108,588.22	\$34,949,592.83	\$3,059,900.65
Debt Service	\$418.70	\$4,665,506.00	\$1,075,253.13	\$3,590,671.57
Capital Fund - 402	\$15,125,123.85	\$202,094.18	\$382,494.35	\$14,944,723.68
Trust Fund - Regular	\$772,058.63	\$64,243.13	\$31,716.23	\$804,585.53
Trust Fund - Special	\$651,066.52	\$92,872.53	\$77,692.24	\$666,246.81
Endowment Fund	\$79,139.62	\$995.25	\$0.00	\$80,134.87
Agency Fund	\$49,790.20	\$50,744.96	\$60,870.77	\$39,664.39
Project Build	\$0.00	\$1,149.24	\$323.71	\$825.53
Keybank FNDTH College Prep/Entrepreneurship	\$63,465.26	\$0.00	\$17,604.17	\$45,861.09
Cleveland Foundation Encore Initiative	\$17,199.21	\$0.00	\$17,199.21	\$0.00
MyCom Neighborhood	\$21,225.66	\$50,000.00	\$46,308.90	\$24,916.76
Memory Lab Grant	\$8,468.18	\$0.00	\$3,135.28	\$5,332.90
WVH Garden Grant	\$1,041.09	\$2,000.00	\$1,771.27	\$1,269.82
Adult Education Services (AES)	\$37,083.67	\$568,150.07	\$735,045.95	(\$129,812.21)
Project Learn	\$194,861.40	\$98,079.82	\$183,058.18	\$109,883.04
Baby Club	\$37,488.41	\$0.00	\$28,383.23	\$9,105.18
IPAD Lab	\$1,638.36	\$0.00	\$0.00	\$1,638.36
Food & Culinary Literacy Programs	\$42,600.00	\$28,000.00	\$28,802.84	\$41,797.16
Hotspot Lending Program	\$0.00	\$22,500.00	\$0.00	\$22,500.00
Homework Centers	\$39,884.37	\$127,000.00	\$164,398.48	\$2,485.89
Summer Camps	\$5,000.00	\$64,340.00	\$17,053.32	\$52,286.68
Kindergarten and Baby Kits	\$13,500.00	\$20,000.00	\$21,742.46	\$11,757.54
Special School Programming	\$0.00	\$116,783.45	\$100,897.04	\$15,886.41
SUBTOTAL	\$20,061,958.39	\$41,283,046.85	\$37,943,343.59	\$23,401,661.65

CUYAHOGA COUNTY PUBLIC LIBRARY						
Investments Approval						
Fiscal 2019 --June						
Description	Institution of Deposit	Par Value/Qty.	Purchase Yield	Purchase Date	Maturity Date	% of Assets
Money Market Funds						
Sweep Account	Key Bank	\$7,053,887.48	1.01%	n/a	n/a	29.44%
Money Market Fund	Northwest Bank	\$100.00	0.00%	n/a	n/a	0.00%
Money Market Fund	US Bank	\$5,935.90	2.01%	n/a	n/a	0.02%
Money Market Fund	Fifth Third	\$57,399.76	2.13%	n/a	n/a	0.24%
ICS Account	TriState Capital	\$0.00	0.52%	n/a	n/a	0.00%
Star Ohio Accounts						
Star Ohio Accounts	Star Ohio	\$6,169,808.66	2.51%	n/a	n/a	25.75%
US Treasury						
US Government Agency Discount Notes						
Commercial Paper						
Natixis NY	Dbtc Americas	\$100,000.00	2.82%	January 28, 2019	September 25, 2019	0.42%
Natixis NY	Dbtc Americas	\$275,000.00	2.71%	February 15, 2019	September 12, 2019	1.15%
JP Morgan Securities	JP Morgan Securities LLC	\$370,000.00	2.68%	February 27, 2019	November 22, 2019	1.54%
Mufg Bank Ltd	Mufg Union Bk	\$300,000.00	2.73%	February 27, 2019	November 22, 2019	1.25%
Bnp Paribas NY	Bnp Paribas	\$300,000.00	2.58%	April 29, 2019	October 25, 2019	1.25%
Toyota Motor Credit	Citibank	\$135,000.00	2.46%	May 31, 2019	November 26, 2019	0.56%
Toronto Dominion Securities	Toronto Dominion Ban	\$125,000.00	2.44%	June 10, 2019	October 18, 2019	0.52%
Certificate of Deposit						
Certificate of Deposit	Discover Bank	\$247,000.00	2.30%	October 19, 2015	September 30, 2020	1.03%
Certificate of Deposit	Capital One National Bank	\$247,000.00	2.28%	October 19, 2015	October 7, 2020	1.03%
Certificate of Deposit	Capital One National Bank	\$247,000.00	2.28%	October 19, 2015	October 7, 2020	1.03%
Certificate of Deposit	Goldman Saks Bank	\$247,000.00	2.20%	October 21, 2015	October 21, 2020	1.03%
Certificate of Deposit	Amex Centurion	\$247,000.00	2.27%	October 29, 2015	October 28, 2020	1.03%
Certificate of Deposit (CDARS)	TriState Capital	\$2,137,655.18	2.45%	June 20, 2019	June 18, 2020	8.92%
Certificate of Deposit	Fifth Third Bank	\$245,000.00	2.45%	March 27, 2019	March 27, 2020	1.02%
Certificate of Deposit	Mutual Savings Bank	\$245,000.00	2.45%	March 27, 2019	March 27, 2020	1.02%
Certificate of Deposit	State Bank of India	\$245,000.00	2.45%	March 27, 2019	March 25, 2020	1.02%
Certificate of Deposit	Wells Fargo Bank National Assoc	\$250,000.00	2.35%	April 24, 2019	May 26, 2020	1.04%
Certificate of Deposit	Multi-Bank Securities Inc	\$249,000.00	2.65%	May 22, 2019	May 15, 2023	1.04%
Certificate of Deposit	Multi-Bank Securities Inc	\$246,000.00	2.55%	May 22, 2019	May 16, 2022	1.03%
Certificate of Deposit	Multi-Bank Securities Inc	\$246,000.00	2.50%	May 30, 2019	May 28, 2021	1.03%
Certificate of Deposit	Multi-Bank Securities Inc/Ally Bk Midvale	\$246,000.00	2.50%	June 10, 2019	June 6, 2022	1.03%
Agency Securities						
Federal National Mortgage	Davidson DA & Company	\$1,100,000.00	1.50%	September 30, 2016	September 30, 2020	4.59%
Federal National Mortgage	Davidson DA & Company	\$550,000.00	1.42%	July 27, 2016	July 27, 2020	2.30%
Federal National Mortgage	Davidson DA & Company	\$1,040,000.00	1.40%	August 30, 2016	August 28, 2020	4.34%
Federal National Mortgage	Fcstone Financial Inc.	\$1,030,000.00	1.60%	August 30, 2016	August 24, 2021	4.30%
TOTAL PORTFOLIO						
		\$23,956,786.98			100.00%	

CUYAHOGA COUNTY PUBLIC LIBRARY

Purchase Approval List

July 23, 2019

Item	Quantity	Description	Supplier	Unit Cost	Total Amount
		ENCUMBRANCE INCREASES			
1		Construction legal services			
		SUMMARY: Necessary to increase amount from \$20,000 to \$30,000 due to additional services needed.			
		As requested by the Operations-Facilities Division.	Roetzel & Andress LPA		\$10,000.00
		RENEWAL PURCHASES			
2		Event & room reservation software renewal			
		SUMMARY: Necessary for scheduling events & meeting rooms system wide.			
		As requested by the Information Technologies Division.	Communico		\$26,000.00
		GRANT PURCHASES			
3		Consulting Services			
		SUMMARY: Necessary for Project Learn corrections consultant.	Elsie Day		
		As requested by the Learning and Literacy Division.	Consulting Services		\$25,000.00
		NEW PURCHASES			
4	5000	Dual phone charging cable with plug		\$4.00	
		SUMMARY: Necessary to offer for sale to patrons in branches.			
		As requested by the Operations-Finance Division.	4Imprint		\$20,000.00
5		Risk Threat & Vulnerability Assessment			
		SUMMARY: Necessary for system wide safety and security assessment.	Security Risk Management		
		As requested by the Operations-Facilities Division.	Consultants		\$53,730.00

**Cuyahoga County Public Library
Gift Report / June 1-30, 2019**

Gift Amount	Donor	Recipient	Purpose
\$500.00	Bay Village Early Childhood PTA	Bay Village Branch Trust Fund	Branch support
\$10,000.00	M.E. and F.J. Callahan Foundation	CCPL	Grade level reading
\$5,000.00	Cleveland-Cliffs Foundation	CCPL	Summer Camps
\$6,000.00	Eaton Corporation	CCPL	Homework Centers
\$35,000.00	The Char and Chuck Fowler Family Foundation	CCPL	Summer Camps - payment 2 of 2
\$370.19	Friends of the Bay Village Branch	Bay Village Branch Trust Fund	June programming and supplies
\$548.29	Friends of the Beachwood Branch	Beachwood Branch Trust Fund	for programming
\$405.00	Friends of the Berea Branch	Berea Branch Trust Fund	June programming and supplies
\$325.00	Friends of the Brecksville Branch	Brecksville Branch Trust Fund	June programming and supplies
\$1,205.89	Friends of the Brook Park Branch	Brook Park Branch Trust Fund	June programming and supplies
\$262.61	Friends of the Brooklyn Branch	Brooklyn Branch Trust Fund	June programming and supplies
\$716.54	Friends of the Chagrin Falls Branch	Chagrin Falls Branch Trust Fund	June programming and supplies
\$783.99	Friends of the Fairview Park Branch	Fairview Park Branch Trust Fund	for train tables
\$359.08	Friends of the Gates Mills Branch	Gates Mills Branch Trust Fund	June programming and supplies
\$456.08	Friends of the Independence Branch	Independence Branch Trust Fund	June programming and supplies
\$339.51	Friends of the Middleburg Heights Branch	Middleburg Heights Branch Trust Fund	June programming and supplies
\$228.21	Friends of the North Olmsted Branch	North Olmsted Branch Trust Fund	June programming and supplies
\$515.85	Friends of the North Royalton Branch	North Royalton Branch Trust Fund	June programming and supplies
\$154.14	Friends of the Olmsted Falls Branch	Olmsted Falls Branch Trust Fund	June programming and supplies
\$527.33	Friends of the Orange Branch	Orange Branch Trust Fund	June programming and supplies
\$65.00	Friends of the Parma Heights Branch	Parma Heights Branch Trust Fund	June programming and supplies
\$193.00	Friends of the Southeast Branch	Southeast Branch Trust Fund	June programming and supplies
\$3,937.29	Friends of the Strongsville Branch	Strongsville Branch Trust Fund	June programming and supplies; staff patio plants; mood
\$600.00	Kent State University	Maple Heights Branch Trust Fund	honorarium - preschool workshop
\$83,878.62	Estate of Shirley Kreps	Solon Branch Trust Fund	beneficiary distribution
\$500.00	John R. Lahl	CCPL	Will help build collection of hands-on building materials, specifically https://www.make.do/ for bookables for branch programming
\$34,086.45	Estate of Kenneth McGowan	CCPL	final beneficiary distribution
\$10,000.00	City of Warrensville Heights	CCPL	Kindergarten Boost Camp & 123READ

Cuyahoga County Public Library

Resolution 2019 - _____

A RESOLUTION AUTHORIZING THE LIBRARY TO ENTER INTO AN AGREEMENT WITH DONLEY'S INC. FOR CONSTRUCTION MANAGEMENT AT RISK SERVICES RELATING TO THE NEW CONSTRUCTION OF THE BAY VILLAGE BRANCH LIBRARY LOCATED IN THE CITY OF BAY VILLAGE

Whereas, the Cuyahoga County Public Library (the "Library") is a county library district and political subdivision of the State of Ohio organized under the Ohio Revised Code and this Board of Library Trustees (this "Board") is body politic and corporate organized and acting under relevant provisions of the Ohio Revised Code, including sections 3375.22 and 3375.40 of the Ohio Revised Code; and

Whereas, this Board previously authorized the Executive Director, or designee, to negotiate an agreement for Construction Manager at Risk Services for the new construction of Library facilities located in the City of Bay Village and designated as the Bay Village Branch (the "Project"), based on responses to a Request for Professional Qualifications previously issued; and

Whereas, the Executive Director, or designee, did negotiate with the ranked responders to the Request for Professional Qualifications in accordance with Chapter 153 of the Ohio Revised Code and proposed the contract with Donley's, Inc. (the "Construction Management" firm); and

Whereas, this Board has determined that it is in the interest of the Library to proceed with the execution of the Agreement with the Construction Management Firm for Construction Management at Risk services for the Project.

Now therefore be it resolved by the Cuyahoga County Public Library:

Section 1. The Board of Trustees concurs with the result of negotiations by the Executive Director, or designee, for the Agreement with the Construction Management Firm for the Project in the amount of \$587,750.00.

Section 2. That the Board of Trustees hereby authorizes the Executive Director to execute and deliver on behalf of the Library the Agreement to the Construction Management Firm in substantially the form as attached hereto and in an amount not to exceed \$587,750.00.

Section 3. It is found and determined that all formal actions of this Board concerning and relating to this resolution were adopted in an open meeting of this Board and that all deliberations of this Board and any of its committees that resulted in this formal action were meetings open to the public in compliance with all legal requirements, including relevant provisions of the Ohio Revised Code.

Approved July 23, 2019

Patricia A. Shlonsky, President

Dean E. DePiero, Secretary



AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

Bay Village Library Project

THE OWNER:
(Name, legal status and address)

Cuyahoga County Library System
2111 Snow Road
Parma, OH 44134

THE ARCHITECT:
(Name, legal status and address)

HBM Architects
1382 W. 9th St.
Cleveland, OH 44113

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

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Work, Definition of

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1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Contractor's Bid Proposal (revised) dated April 10, 2019, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

~~The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~ Intentionally omitted.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

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G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. In the event work is stopped due to an investigation into concealed or unknown conditions, and Contractor is unable to work elsewhere on the Project, Owner will issue a Change Order for an equitable extension of the Contract Time.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities

for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings,

Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's consultants, and~~ Owner's officers, directors or trustees, agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, ~~regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder.~~ liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and

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with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 ~~The Architect's Architect shall make all initial decisions on matters relating-related to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. Documents but the Owner shall have the right to make all such final and binding decisions.~~

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with

reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be

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responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and

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profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect ~~will make~~ may recommend to Owner an interim determination for purposes of monthly certification for payment for those costs and ~~certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.~~ Owner will make the final determination regarding such payment.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract ~~Time~~ Time and provided that Architect notifies the Owner in writing of such minor changes. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation ~~and~~ and/or binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the

Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall ~~pay each Subcontractor, no later than seven days~~ act as Owner's agent with respect to payments to be made to Subcontractors and shall pay each Subcontractor as agent for the Owner no later than ten (10) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. The agency relationship between Owner and Contractor referenced in this §9.6.2 is limited to the Contractor's obligation to make payments which are owed to Subcontractors by Contractor with funds received from Owner by Contractor. Nothing herein affects the at-risk nature of the Agreement.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

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§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor~~ Payments received by the Contractor as agent for Owner for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
 .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;

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- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be

given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract

Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The ~~Owner, Architect, and Architect's consultants~~ Owner shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages

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caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

~~The Owner, at the Owner's option, may. Unless otherwise agreed by the parties in the Contract Documents, the Owner will~~ purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other.

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If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than ~~100-50~~ percent of the total number of days scheduled for completion, or ~~120-90~~ days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case

may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement; any demobilization and protection costs.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 ~~Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~ Intentionally omitted.

~~§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~

~~§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision~~

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Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement otherwise. The process, location and selection of mediator shall be agreed to by the parties. Each party shall bear its own costs and the party initiating mediation shall bear all filing fees if applicable. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Intentionally omitted.

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§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Linda Diehl, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 11:26:44 ET on 06/27/2019 under Order No. 5153936843 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)



AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the day of May in the year 2019
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

Cuyahoga County Public Library
2111 Snow Road
Parma, OH 44134

and the Construction Manager:
(Name, legal status and address)

Donley's, Inc.
5430 Warner Road
Cleveland, OH 44125

for the following Project:
(Name and address or location)

Bay Village Public Library Project.

The Architect:
(Name, legal status and address)

HBM Architects
1382 W. 9th St.
Cleveland, OH 44113

The Owner's Designated Representative:
(Name, address and other information)

Jeff Mori
Cuyahoga County Public Library

The Construction Manager's Designated Representative:
(Name, address and other information)

Greg Consolo
Vice President, Construction Management
216-407-8613

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Architect's Designated Representative:
(Name, address and other information)

Peter Bolek
HBM Architects

The Owner and Construction Manager agree as follows.

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Construction Manager's Bid Proposal dated April 10, 2019, Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Nothing contained in this Article 2 shall require Construction Manager to engage in any design and/or engineering responsibilities. The parties acknowledge and agree that Construction Manager is not a design professional and is not licensed to perform design and/or engineering work. If Construction Manager is required to provide design assistance work, the scope of such work is limited to constructability, value engineering and/or hiring of licensed professionals to provide design work on Construction Manager's behalf.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee; and
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- ~~.5 A date by which the Owner must accept the Guaranteed Maximum Price-based.~~

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 ~~If the Owner notifies the Construction Manager that the Owner has accepted~~ Following Owner's acceptance of the Guaranteed Maximum Price proposal in ~~writing before the date specified in the Guaranteed Maximum Price proposal, writing,~~ the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed-upon~~ agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. ~~The Owner shall then~~ Construction Manager will determine, with the advice of the ~~Construction Manager~~ Owner and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a ~~cost-plus~~ cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

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§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other

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information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2014, B103™-2007, Standard Form of Agreement Between Owner and Architect, ~~Construction Manager as Constructor Edition~~, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. Owner shall also be responsible for providing the services of any other design professionals (including structural or mechanical engineers or landscape architects) required for completion of the Work unless such work is specifically delegated to the Construction Manager in the Scope of Work contained in this Agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

\$29,646

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§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (~~—~~) ~~days after the invoice date by the first of the month following the date payment is due pursuant to this Agreement~~ shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon)

% Five Percent 5%

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

2.65%

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

TBD

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

TBD

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred percent (100 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.1.3 If the actual Cost of the Work is less than the Cost of the Work provided for in the GMP, the difference constitutes shared savings on the Project. The Construction Manager and Owner will each receive a portion of such shared savings as follows: 40% to Construction Manager and 60% to be retained by Owner. Any shared savings payments will be made in conjunction within thirty (30) days after final payment is issued by Owner to Construction Manager.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

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(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self insurance for either full or partial amounts of the coverages required by the Contract

Documents, with the Owner's prior approval, including but not limited to subcontractor default insurance at the rate of 1.30% of the Cost of the Work, project wrap policies and/or contractor controlled insurance policies.

§ 6.6.2 Sales, use or similar ~~taxes~~ taxes, including any CAT taxes, imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

~~**§ 6.6.8** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~
Not used.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;

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- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, ~~less retainage of percent (— %) Fee.~~ The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its ~~completion; completion, and no retention shall be held on Construction~~ Manager's fee;
- .4 Subtract retainage of ~~percent (— %) from that portion of the Work that the Construction Manager self-performs; ten percent (10 %) until the Work is fifty percent (50%) complete at which time~~ retainage shall be at 0%, unless reinstated by Owner for reasonable cause;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

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- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the

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Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of Insurance or Bond

8.1 Worker's Compensation and Employer's Liability

Limit of Liability or Bond Amount (\$0.00)

8.1 Worker's compensation in accordance with state law – can be provided through a state-authorized self-funded program; Employer's liability limits shall be not less than \$1,000,000 per employee per accident, \$1,000,000 per employee by disease, and \$1,000,000 aggregate

8.2 Commercial General Liability

8.2 Each occurrence limit: \$1,000,000

Damage to Premises: \$50,000 (any one premises)

Medical Expense Limit: \$5,000 (any one person)

Personal and Advertising

Injury Limit: \$1,000,000 (any one entity)

General Aggregate Limit: \$5,000,000

Products/Completed Ops

Aggregate Limit: \$2,000,000 (remains in force for three years after final completion)

8.3 Business Automobile Liability Insurance

8.3 Bodily Injury (including death)

And Property Damage: \$1,000,000

8.4 Umbrella or Excess Coverage

8.4 For Employer's Liability,

CGL, and Business Auto: \$5,000,000

8.5 Professional Liability Coverage

8.5 Minimum Coverage Limit: \$2,000,000

8.6 Pollution Liability Coverage

8.6 Clean-Up on or off site for

release of pollutants; 3rd party

liability, 3rd party property loss

of use/revenue; natural

resources damages: \$2,000,000

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

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☒ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

All litigation will be conducted in the Cuyahoga County Court of Common Pleas

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect)

Not applicable.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will

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terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Non-Discrimination. Construction Manager agrees:

.1 That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Construction Manager, subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, disability, color, sexual identity, status as a Vietnam or other veteran, or any other legally protected classification, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.

.2 That neither the Construction Manager, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, disability, color, sexual identity, status as a Vietnam or other veteran, or any other legally protected classification, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, disability, color, sexual identity, status as a Vietnam or other veteran, or any other legally protected classification.

.3 That there shall be deducted from the amount payable to the Construction Manager by the Owner under this Agreement a forfeiture of Twenty-Five (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.

.4 That this Agreement may be cancelled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this Agreement.

§ 11.3 Affirmative Action.

11.3.1 The Construction Manager and each of its subcontractors shall comply with the State's Equal Employment Opportunity requirements described under OAC 123:2-3 through 123:2-9 that include, without limitation, the requirements described under this Section 1.1.3. 1.1.3.2 The Construction Manager shall demonstrate its good faith efforts to comply with the utilization goals currently established for minority and women employees and submit documentation to the EOC. 1.1.3.3

11.3.2 By the 10th day of each month, the Construction Manager and each subcontractor shall submit to the Owner's EEO Coordinator a completed Ohio Construction Contract Information Report - Input Form 29 (I-29) for the preceding month. The form shall be submitted as directed in writing by the Owner.

11.4 Prevailing Wages

11.4.1 The Construction Manager shall comply with the prevailing wage requirements described under ORC

Chapter 4115 that include, without limitation, the requirements described under this Section 1.2.

11.4.2 The Project is subject to payment of prevailing wage rates. Therefore, the Construction Manager shall:

11.4.2.1 pay to laborers and mechanics performing Work on the Project the prevailing wage rates of the Project locality, as determined by the Ohio Department of Commerce, Wage and Hour Bureau;

11.4.2.2 post in a prominent place readily accessible by all workers on the Site, a legible listing of the current classifications of laborers, workers, and mechanics employed under this Contract;

11.4.2.3 ensure that the rates posted are current and remain posted in legible condition during the period of the Contract; and

11.4.2.4 not be entitled to an increase in the Contract Sum on account of an increase in prevailing wage rates, except as otherwise provided by Applicable Law

11.4.2 The Construction Manager may access the Ohio Department of Commerce, Wage & Hour Bureau at its website, <http://198.234.41.198/w3/webwh.nsf/pages/PrevailingWageBid>, to obtain the current wage rates.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

- .5 Other documents:
(List other documents, if any, forming part of the Agreement)

a. Construction Manager's Proposal and Bid Documents dated 4/10/19

This Agreement is entered into as of the day and year first written above.

 OWNER *(Signature)*

 CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

(Printed name and title)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Linda Diehl, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 11:27:21 ET on 06/27/2019 under Order No. 5153936843 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)